(2002) 04 P&H CK 0143

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1422 of 2001

Gursharan Singh Sodhi APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Arms Act, 1959 — Section 25
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3, 7
Constitution of India, 1950 — Article 14, 21, 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Customs Act, 1962 — Section 108, 135
Penal Code, 1860 (IPC) — Section 411, 414

Citation : (2002) 84 ECC 548 : (2002) 2 RCR(Criminal) 700

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Through this Criminal Writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, petitioner Gursharan Singh Sodhi has prayed for the quashing of detention order bearing No. 1132/9 2-3. III (COFEPOSA)/955 dated 1.7.1992, passed by respondent No. 2 (Deputy Secretary Home, Government of Punjab, Chandigarh) u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred as "COFEPOSA") in pursuance of which he has been detained in Central Jail, Bathinda (Punjab) since 24.7.2001 as it is violative of Articles 14, 21 and 22 of the Constitution of India.

2. It is alleged in this petition that he is absolutely innocent and has been detained in pursuance of the said order of detention passed by respondent No. 2. It is alleged that the detaining authority passed this order of detention without application of mind and in a mechanical and routine manner. He has been attending the Court of Additional Chief Metropolitan Magistrate, New Delhi in

connection with one false case under the Customs Act pertaining to the year, 1987. He did appear in this case on 28.10.1991 along with his counsel. When he was coming out of the Additional Chief Metropolitan Magistrate, New Delhi, he was forcibly abducted from the Court premises in the presence of his Advocate by the officials of the directorate of Revenue Intelligence (D.R.I.) who took him to their office in their Vehicle No. DBC-7056. He was mercilessly beaten and coerced into making an involuntary statement. His Advocate filed Criminal Writ Petition No. 594 of 1991 before the Delhi High Court on the same very day, which was a writ of habeas corpus. Copy of the said writ petition is annexed as Annexure P4 to this petition. Annexure P. 2 is the order of detention and Annexure P. 3. is the list of documents delivered to him by the detaining authority before the detention order was passed. It is alleged that notice was issued to the Union of India by the Delhi High Court. Respondents to Criminal Writ petition No. 594 of 1991 filed reply to that petition by means of affidavit.

On 31.10.1991, the Delhi High Court passed a detailed order expressing its doubts over the stand of the respondents therein and directed them to file an additional affidavit. Copy of the said order dated 31.10.1991 of Delhi High Court is Annexure P. 5. Order Annexure P. 5 was neither placed for consideration before the detaining authority nor was considered by the detaining authority although the order Annexure P, 5 was not crucial and relevant. Even after the matter had been taken cognizance of by the Delhi High Court, the officials of the respondents therein did not stop acting illegally and indulged into high-handedness and the petitioner was sent illegally and surreptitiously by them to the customs officials at Amritsar. He was again beaten and coerced into making an involuntary statement on 30.10.1991. Although the detaining authority relied on the statement dated 30.10.1991, alleged to have been made by him before the customs officials copy thereof was not supplied to him. It is weil-settled law, that the detaining authority is bound to supply copies of ail the documents relied upon by the detaining authority within five days of his detention in order to enable the detenu to make an effective representation against his detention. In this manner, he became deprived of his Constitutional right as enshrined in Article 22(5) of the Constitution of India, to make an effective representation against his detention. It is alleged that the detention order Annexure P. 2 is liable to be quashed on this sole ground as held by the Hon''ble Supreme Court in several judicial pronouncements made from time to time.

In the grounds of detention supplied to him there is allegation of recovery of 200 gold biscuits from the Maruti car bearing registration No. DNA-1362, which was allegedly being driven by Kuldeep Singh alias Puppu son of S.eva Singh alongwith another person sitting with him namely: Balwinder Singh. The said car was registered in the name of Shri Ajay Kumar Jain, The detention order passed against Kuldeep Singh and Balwinder Singh, the aforesaid persons, was revoked, on the opinion of the Advisory Board though the allegation was the recovery of 200 gold biscuits which was a contraband item effected from that car. There is not even an iota of evidence to connect the petitioner with the recovery of 200 gold biscuits from Maruti car bearing No. DNA-1362. There is inordinate delay in passing the detention order Annexure P. 2. which he has called in question through this criminal writ petition. Detention order was passed on 1.7.1992 while the recovery of 200 gold biscuits from the Maruti car No. DNA-1362 allegedly took place on 9.6.1991, meaning thereby, the detention order was passed after a lapse of about 13 months of the date of alleged recovery of the contraband items from Maruti car No. DNA-1362. It is further alleged that there is inordinate delay in executing the detention order.

For more than ten years, no step was taken for detaining the petitioner pursuant to the order of detention passed on 1.7.1992. If the detention order was passed in 1992 and the same was executed in 2001, the very purpose of detention lost its meaning as the very purpose of the "COFEPOSA" is defeated. The object of COFEPOSA is not punitive but preventive. Though he was appearing before the Chief Judicial Magistrate, Amritsar, in connection with the case under the Customs Act, pertaining to the year 1987, no step was taken to serve this detention order on him for taking him into custody. In support of the fact that he had been regularly appearing before the Chief Judicial Magistrate, Amritsar in a case titled Assistant Collector Customs, Ministry of Finance, Department of Revenue, Union of India, Amritsar v. Gursharan Singh Sodhi, son of Jagat Singh, resident of 2/32-A, East Punjabi Bagh, New Delhi and another, he has attached the detailed order sheet as Annexure P. 6 to the petition. No prejudicial activity has been attributed to him during the last more than 12 years. As such this detention order is punitive in character rather than preventive in character. When no effort was made to serve this detention order on him during the past more than 10 years, and if no prejudicial activity was attributed to him during the past ten years, there was no point in taking him in custody in 2001 in pursuance to the order of detention dated 1.7.1992. The order of detention dated 1.7.1992 loses its meaning when it remained only on paper for about nine years. He also sent one intimation in May 1992 to the Assistant Collector (Preventive), Amritsar while in Central Jail, Indore intimating him that if there is any detention order passed by the authorities in Punjab, the same may be served upon him in Central Jail Indore, Annexure P. 7 is the reply sent to him by the Assistant Collector (Preventive), Central Excise Collectorate, Chandigarh at his Indore address. He remained confined in Indore Jail till 28.7.1992.

The impugned order of detention dated 1.7.1992 could have been served upon him in Central Jail, Indore if the same were genuine. In the earlier detention order dated 18.11.1991 which was quashed by the Hon''ble High Court at indore vide judgment dated 28.7.1992, the detaining authority also took into consideration the recovery of 200 contraband gold biscuits on 9.6.1991 and the detaining authority also relied upon the alleged involuntary statement dated 30.10.1991 of the petitioner in that case. It is alleged that no detention order could be passed against respondent No. 1 on the basis of another detention order on the same material and on the same grounds which the detaining authority had taken into consideration while passing the earlier order of detention dated 18.11.1991. It is further alleged that there is inordinate delay in consideration of the representation sent by him to the detaining authorities on 7.8.2001 but the same was rejected only on 26.9.2001. Annexure P. 8 is the copy of said representation dated 7.8.2001. Vide order dated 24.9.2001 (Annexure P. 9), the said representation was rejected by the detaining authority. The Hon''ble Supreme Court has held in a catena of judgments that even one day''s delay in considering the representation challenging the order of detention is fatal and shall be a ground for revocation of the order of detention. The detaining authority ought to have considered his representation expeditiously as his right to liberty is one of the basic postulates on which the democratic structure of our country rests. His right to make effective representation was affected because some of the documents supplied to him which constituted the grounds of detention, were illegible and despite specific request, the legible copies of those documents, were not supplied to him.

3. The respondents contested this petition urging that the impugned order of detention was passed against the petitioner after subjective satisfaction of the competent authority, it is a perfectly valid and legal order and is not liable to be quashed. It was urged that the petitioner is involved in smuggling activities since 1986 and he has contacts with smugglers based in Pakistan and Dubai. Earlier to this Criminal writ petition, various detention orders were passed in the years 1986, 1987 and 1991 under "COFEPOSA" against the petitioner. As such petitioner cannot ciaim that he is a person having clean credentials and antecedents. Even otherwise, the detention order is preventive and not punitive. Petitioner challenged the order of detention dated 30.6.1992, passed by respondent No. 2 in the High Court of Madhya Pradesh through Crl. Writ Petition No. 1949 of 1992 which was dismissed on 14.11.2000 by the Indore Bench of the Madhya Pradesh High Court. The instant Crl. Writ petition deserves dismissal on this score. The detention order was passed after full application of mind to the facts and material placed on record. The detention order does not suffer from any illegality as on 30.10.1991, he has admitted in his voluntary statement that he had been involved in smuggling activities since 1986 and he had contacts with smugglers based in Pakistan and Dubai. The fact is that on 29.10.1991, he was served upon summons bearing DRIF No. 338/VII/37/91 dated 28.10.91 by the Assistant Director Revenue Intelligence at 11.10 AM, requiring his presence in the office of the Directorate at New Delhi at 11.30 AM in connection with a seizure case of 58 silver slabs seized on 17.5.1991.

On 29.10.1991, he appeared in the office of the Directorate in compliance with the said summons and his statement was recorded in connection with the said case of seizure of silver slabs. On 29.10.1991, he was also served upon another summons bearing C. No. VIII-10 (29) dated 29.10.1991 issued by Superintendent City (Preventive), Customs Divisions, Amritsar, requiring his presence at Amritsar in Customs office on 30.10.1991 at 2.00 PM in connection with the enquiries in the case of smuggling of 200 FM gold biscuits seized by Amritsar Customs on 9.6.1991. Petitioner filed a habeas corpus petition before

Delhi High Court through his counsel on 29.10.1991. On 30.10.1991, Delhi High Court passed the following order:

Issue notice to the respondent to show cause why the petition be not admitted.... Gursharan Singh Sodhi, if still in custody, should be produced in Court.

4. In the meantime, he appeared before Customs authorities at Amritsar on 30.10.1991 and his statement was recorded u/s 108 of the Customs Act. In that statement, he admitted his involvement in the seizure case of 200 gold biscuits effected by Amritsar customs authorities on 9.6.1991. He was accordingly arrested by the Amritsar customs authorities on 30.6.1991 and he was produced before Chief Judicial Magistrate, Amritsar and was sent to judicial custody. All the documents which were relied upon in passing the detention order, were duly supplied to him within the stipulated time. Petitioner had alleged that some of the documents supplied to him were not legible. He was supplied with necessary/ legible copies of necessary documents. In token of receipt of the legible copies of necessary documents, he gave receipt date 14.8.1991 (AnnexureR/l). Detenu (petitioner) in his statement dated 30.10.1991 confessed that Shri Ajay Kumar Jain was his business partner and Maruti car No. DNA-1363 was purchased by them and transferred in the name of Ajay Kumar son of J.R. Saran, residents of Laxmi Nagar, New Delhi but remained with the petitioner for his personal use. He also confessed in his statement dated 30.10.1991, that he had organized the smuggling of 200 contraband gold biscuits and 150 gm opium. It was further urged that before the detention order is passed against any person under the relevant law, the same is processed at various levels and information is gathered from field agencies.

In this case also activities of the petitioner were collected from the field agencies and were processed. As such, there was no delay while passing the detention order. Detention order was passed on 30.6.1992. Petitioner filed Crl. Writ Petition No. 1949 of 1992 in the High Court of Madhya Pradesh, Indore, against the said detention order which was stayed vide order Annexure (R/II) by the Madhya Pradesh High Court (Indore Bench). Therefore, the detention order could not be executed upon him. The detention order was served upon him on 24.7.2001 only after vacation of stay by the Madhya Pradesh High Court as conveyed by Shri B.G. Nima, Advocate Supreme Court Senior Standing Counsel for Central Government, Indore (Ann. R/III). He was detained under "COFEPOSA" in 1986,1987,1991 and 1992. A case FIR No. 55 dated 23.8.93 u/s 411/414, IPC, 25/54/59 Arms Act, 17/18/61/85 NDPS Act, 3/24/20 IP Act, 30S Act was also registered against him in PS Kotwali, Amristar. He was arrested in this case on 23.8.1993. His record is not clean. It paints him a smuggler involved in smuggling activities in collaboration with smugglers based in Pakistan and Dubai. The impugned order of detention passed against them is not only on account of recovery of 200 contraband gold biscuits but because there was other sufficient material against him which called for his detention under the "COFEPOSA".

Details of his activities have been mentioned in the grounds of detention, copy whereof was supplied to the petitioner. Recovery of 200 contraband gold biscuits was effected in Punjab and therefore, the detention order was passed in the State of Punjab. There was no delay in disposing of his representation against the order of detention. The detention order was served upon him on 24.7.2001 after vacation of stay.

5. I have feared the learned Counsel for the petitioner and the learned Deputy Advocate General, Punjab.

6. It was submitted by the learned Counsel for the petitioner that the order of detention dated 1.7.1992 was passed with a view to prevent him from indulging into smuggling activities on the international plane which is prejudicial to the security of the State. It was submitted that this order was not punitive in character reather preventive in character passed with a view to prevent him from the commission of smuggling activities. That there was heavy insecurity to our country and that there was depletion of foreign exchange. It was submitted that such an order should have been served upon him soon after so that the object of this order was achieved. It was submitted that instead of serving this order upon him soon after 1.7.1992, this order was served upon him in 2001 and he was detained in custody only on 24.7.2001. It was submitted that this order should be quashed as the object for which this order was passed remained unfulfilled. In support of this submission, he drew my attention to the decision rendered by this Court in Joginder Singh v. Central Government through the Secretary to Government of India, Ministry of Finance, Department of Revenue 1999 (1) RCR 453. Wherein it was held that where an order of detention was passed on 28.5.1997 and no serious effort was made to detain him in custody although during that period he was attending the Court, delay would render the order invalid. It was also pointed out that the subjective satisfaction of the detaining authority was not real. In Joginder Singh''s case (supra), the order of detention was passed against Joginder Singh on 28.5.1997 by the Joint Secretary to Government of India, Ministry of Finance, Department of Revenue (COFEPOSA Unit), New Delhi. The detention order was served upon him on 27.3.1998 after a lapse of a period of ten months. During this period, he had been appearing before the trial Court on all dates and there was no stay order against execution of the detention order. It was contended that delay in executing the detention order is unexplained and it renders the preventive detention as punitive. It also creates considerable doubt on the genuineness of the subjective satisfaction of the detaining authority.

7. In reply, it was submitted that the detention order could not be executed earlier as the petitioner was absconding and thereby he was evading execution of the same. The Detention Order was passed on 28.5.1997 and efforts were made by S.S.P, Ferozepur to apprehend Joginder Singh but he was found absconding. P.S. Sadar, Ferozepur conducted raids on 22.7.97, 24.7.97, 18.8.97, 22.8.97, 24.8.97, 5.997, 11.9.97, 22.9.97, 3.10.97 and 9.10.97. but each time, the

petitioner was not found available at his residence. The Hon''ble High Court quashed the order of detention against Joginder Singh in view of its finding that delay in the execution of the detention order rendered the detention of the petitioner invalid and it also showed that the subjective satisfaction of the detaining authority was not real and genuine. Delay in the disposal of the representation made by him against the detention order also influenced the decision of the Hon''ble High Court in saying that there was infringement of the mandate of Article 22(5) of the Constitution. He drew my attention to the decision rendered in Dinesh Kumar Jain v. Union of India 1992 (2) RCR 397, where it was held that the job of detaining authority does not end with the passing of an order of detention. It is imperative for the authority to pursue to secure the detention. Unreasonable delay in execution of the order of detention is fatal to the order of detention. In Manju Ramesh Nahar v. Union of India 1999 (2) RCR 394, the Hon''ble Supreme Court held that "where an order of detention is passed but there is unexplained delay in its execution, the order of detention gets vitiated. Delay would reflect upon satisfaction of detaining Authority and would also show that immediate necessity of passing that order was wholly articial or non-existent. Order of detention was executed after one year. It was explained that detenu was absconding and despite best efforts by Police detenu could not be apprehended. It is a vague explanation. No steps were taken u/s 7 of COFEPOSA or under the provisions of Cr. PC." Order of detention was quashed.

In Motilal Jain Vs. State of Bihar and Others, , it was held that interest of the society is no less important than that of the individual. It was also observed that the provisions of the Constitution for safeguarding the interests of the society harmonise the liberty of the individual with social interests. Individual liberty is one of the most valuable fundamental rights guaranteed by the Constitution to the citizens of this country. In Sk. Abdul Karim and Others Vs. State of West Bengal, , it was indicated that while the Constitution has recognised the necessity of laws as to preventive detention, it has also provided certain safeguards to mitigate their harshness by placing fetters on the legislative powers conferred on this topic. Article 22 lays down the permissible limits of legislation empowering preventive detention and further prescribes the minimum procedure that must be included in any law permitting preventive detention. The act provides for preventive detention. Section 3 gives power to the Central Government of the State Government or any officer of the Central or the State Govt. of the specific status, to pass, with respect to any person with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from smuggling activities specified therein or harbouring persons engaged in smuggling activities, an order directing that such person be detained. This implies that as soon as the Govt, or its officer feels satisfied that an order under this section is necessary, it has to be passed and implemented forthwith so that the prejudicial activities carried on bay a person against whom the order has been passed, may be stopped immediately or at the earliest.

8. It was submitted that the order of detention loses its meaning if it remains on paper and is not executed promptly because if it is not executed promptly, the person against whom the order is passed, wiii continue engaging himself in smuggling activities. If the order of detention remains un-executed, the effect would be with the authorities themselves are giving liberty to the detenu to carry on his smuggling activities, giving rise in that process to a question whether the activities complained of were really prejudicial activities within the meaning of Section 3 of the Act. In SMF Sultan Abdul Kader v. Joint Secretary to Government of India and Ors. 1992 (2) RCR 376, the Hon''ble Supreme Court held that the order of preventive detention which was passed on 14.3.1996 but was served on 7.8.1997 was bad on the ground that there was no explanation why there was delay in serving the order of detention. In T.A. Abdul Rehman v. State of Kerala and Ors. 1990 (25) ECC 55 1989 (2) RCR 459, it was held that delay in executing the order of detention affects the genuineness of the subjective satisfaction recorded by the detaining authority as regards the necessity of detaining the detenu. Court should examine whether the detaining authority has satisfactorily explained the delay.

9. Learned Deputy Advocate General, Punjab on the other hand submitted that there is no delay in the execution of the order of detention which can be attributed to the State. Order of detention was passed on 1.7.1992 by Government of Punjab with a view to stop him from abetting the smuggling of goods and preventing him from indulging in the smuggling activities which was an act prejudicial to the security of the economy of State. With the order of detention, are attached the grounds of detention as Annexure P. 2. In Annexure P. 2, (which are grounds of detention), it is mentioned that on specific information the Customs Preventive Staff Amritsar held naka at bus stand of Beas Town on 9.6.1991 early in the morning and intercepted one blue Maruti car No. DNA-1363 alongwith two persons. On preliminary enquiry, the person who was driving the said car disclosed his name as Kuldeep Singh alias Pappu son of Sewa Singh, resident of Maqboolpura near Damdama Sahib Gurdwara Mehta Road, +Amritsar and the other who was sitting with him disclosed his name Balwinder Singh alias Billa son of Nihal Singh, House No. 1510/22. Outside Dilawari Street, Putilghar GT Road, Amritsar. On enquiry they admitted that contraband gold was concealed in the car. After that the said car was escorted to Customs House, Amritsar alongwith both the occuptants where the said car was searched. As a result of search of the abovesaid car, 200 gold biscuits of ten tolas each of foreign markings wrapped with white and brown coloured adhesive tape, 150 gms of opium was also recovered. The car was registered in the name of Ajay Kumar son of JR Saran, resident of H. No. 644, Guru Ram Dass Nagar, Laxmi Nagar, Delhi-92. This registration certificate was bearing No. 196096, issued by the Directorate of Transport, Administration, Delhi. During preliminary interrogation by the Customs authorities, Kuldeep Singh alias Pappu and Balwinder Singh alias Billu suffered voluntary statements. Shri Ajay Kumar also suffered voluntary statement. In their statements, the name of the petitioner

also figures as engaged in the chain of smuggling activities with them.

10. It was submitted by the learned Deputy Advocate General, Punjab that the order of detention was passed with a view to preventing him from smuggling activities. It was submitted that the order of detention was justified by the grounds of detention. The grounds of detention were duly supplied to the petitioner. It was submitted that the petitioner filed Crl. Writ Petition No. 594 of 1991, Delhi High Court challenging the order of detention dated 31.10.1991 in which the Hon''ble High Court passed order Annexure P. 5. wherein it was directed that if the whereabouts of Gursharan Singh Sodhi are known to any officer or department of Union of India, he should be produced in court on 1.11.1991 at 10.30 AM. It was submitted that he challenged this order of detention in the Madhya Pradesh High Court. The Madhya Pradesh High Court stayed the operation of the order of detention and stay on this order of detention was vacated on 14.11.2000 and it was only after 14.11.2000 that efforts could be made to detain him in custody. The Madhya Pradesh High Court dismissed the petition, as it was not falling within any of the five categories specified in the case oiAddl, Secretary to Govt. of India v. Alka 1992 SCC496 so that detention could be quashed. The Hon''ble Madhya Pradesh High Court dismissed the Crl. Writ Petition primarily on the ground that no writ is ordinarily maintainable if the order of detention is not served on the detenu. It was thereafter that he was served with the order of detention and was sent in custody and he filed the instant Crl. Writ Petition. In this case, there is thus no delay in serving the order of detention by the Customs authorities.

11. It was submitted by the learned Counsel for the petitioner that there is only one case against the petitioner which is pending in the court of Chief Judicial Magistrate. Amritsar namely case No. 273 instituted on 27.3.1992 u/s 135 of the Customs Act, 1962 and there is no other case against him. If he had been a smuggler engaged in the smuggling of goods, there would have been some other case against him either in the court of Chief Judicial Magistrate, Amritsar or elsewhere. It was submitted that "give the dog a bad name, and kill him", should not have induced the authorities to pass an order of detention against the petitioner. The detention order passed against the petitioner was not on tenable grounds. In the order of detention passed by the Deputy Secretary, Home, it is clearly mentioned that this order is being passed because the petitioner had been abetting smuggling of goods and the passing of this order has become necessary with a view to prevent him from indulging in the smuggling of goods. While passing this order, he took into account the grounds of detention. In the reply the State has submitted that he was involved in smuggling activities since 1986 and he has contacts with smugglers based in Pakistan and Dubai.

12. As the petitioner continued evading his arrest pursuant to the order of detention by filing one Criminal Writ in one court or the other, he was detained in custody after the stay operating on his detention was vacated by the Madhya Pradesh High Court on 14.11.2000 and the Madhya Pradesh High Court held that

no writ is ordinarily maintainable where the detention order is not served on the detenu.

13. In this case, the order of detention was passed by the detaining authority on consideration of the grounds of detention. The order of detention was confirmed by the Advisory Board. In such cases, the court cannot go into the sufficiency of material which was laid before the detaining authority while passing an order of detention. It is the subjective satisfaction of the detaining authority which culminates in the passing of the order of detention. The Courts would not interfere in this subjective satisfaction of the detaining authority. As per the State, the petitioner is a smuggler carrying on smuggling activities in collaboration with person who are based in Pakistan and Dubai. It was held in Sfafe of Punjab v. Sukhpal Singh 1990 SCC 231 that preventive detention is ordered always as an anticipatory and precautionary action. Subjective satisfaction of the State is required that the detenu will indulge in terrorist activities if released on bail. Preventive detention can be ordered notwithstanding no criminal case is registered against him. Petitioner has been on his toes all through evading detention persuant to the order of detention. The argument of the learned Counsel that no prejudicial activity was attributed to the petitioner during the last 12 years, pales into insignificance when we see that there is an order of detention dated 1.7.1992 against him which might have been keeping him dissuaded from carrying on smuggling activities.

14. For the reasons given above, I do not think there is any ground worth being considered for quashing the order of detention so this Criminal Writ Petition fails and is hereby dismissed.

