
(1998) 12 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1165 of 1998

Harjinder Singh @ Jinda

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 07-12-1998

Acts Referred:

Customs Act, 1962 — Section 108, 135, 135A

Citation : (1999) 81 ECR 181 : (1999) 2 RCR(Criminal) 136

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Vikram Chaudhary, for the Appellant; Shri Randhir Singh, DAG, for the Respondent

Judgement

Shri R.L. Anand, J.—This is a petition filed by Shri Harjinder Singh alias Jinda son of Shri Karnail Singh resident of village Anayatpur, Police Station Ramdas, Tehsil Ajnala District Amritsar, under Articles 226/227 of the Constitution of India praying for issuance of writ or any other order or direction for quashing order of detention dated 22.1.1998 (Annexure P.1) u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and order dated 9.6.1998 (Annexure P. 6) vide which the earlier order dated 22.1.1996 was confirmed for a period of two years, passed by respondent No. 3 against the petitioner as according to the petitioner both the orders are inherently illegal, manifestly, absurd and passed on extraneous irrelevant and vague grounds.

2. The petitioner states that the impugned order dated 22.1.1998 (Annexure P.1) was served upon him when he was already in judicial custody in a case titled as Inspector of Customs v. Manjit Kaur and Others i.e. Criminal Complaint filed under Sections 21/23/29/30 of the N.D.P.S. Act, 1985 and Section 135A of the Customs Act, 1962.

3. The grounds of detention annexed with the detention order dated 22.1.1998 are that acting on a specific information, a joint party of Customs Staff and Punjab Police, searched the residential premises of Smt. Manjeet Kaur on

11.2.1997 at Village Malalkpur, P. S. Ramdas, Tehsil Ajnala, District Amritsar. Her house was thoroughly searched in her presence and in the presence of two independent witnesses which resulted into recovery of two plastic bags concealed in the wheat straw lying in the verandah of the house. These bags were opened and found to contain twenty five packets of brown powder and white granules in each bag. The powder lying in the packets was tested with the help of drug testing kit which answered positive for the presence of Diacytile Morphine. Three representative samples of 10 grams each were taken from lot of 10 packets. The representative samples had been sent to the Chemical Examiner for analysis and the samples answered positive for Morphine (Heroin). In her statements dated 11.2.1997, 13.2.1997 and 14.2.1997 tendered before the Superintendent Customs, Amritsar u/s 108 of the Customs Act, 1962. Smt. Manjit Kaur admitted the recovery of 50 packets of brown powder and white granules in the manner stated above from her house. She disclosed that on 9.2.1997 Dalip Singh alias Guru son of Fauja Singh working as labourer in the fields came to their house and informed her husband about two bags lying in their sugarcane fields. Thereafter her husband went to the fields and brought home those two bags on his bicycle and kept the same in wheat straw lying in the verandah of the house. She also told that her husband Ajaib Singh informed her father-in-law Shri Surjit Singh about the two bags who advised them to keep those bags in the house and further said that those bags will be delivered to the owner after making necessary enquiries next day or will be handed over to the police. Manjeet Kaur further disclosed that on 11.2.1997 at about 7.30 hours three persons with muffled faces visited their house and discussed something with her husband. Later on her husband informed her that they were demanding those two bags and out of them one disclosed his identity as Avinash. In his statement dated 14.2.1997 Shri Dalip Singh alias Guru disclosed that while he was working in sugarcane fields of Ajaib Singh son of Surjit Singh he found two plastic bags lying in the fields but he did not touch the bags fearing possibility of explosive and had not seen any person placing the said two bags in the fields. He further stated that he met Shri Surjit Singh father of Ajaib Singh and informed him about the said two bags. Thereafter he informed Ajaib Singh who went to Sugarcane fields and carried home the two bags on his cycle. Enquiries were also caused from Surjit Singh who admitted that Dalip Singh alias Guru had informed him about two bags lying in the sugarcane fields of Ajaib Singh. He admitted that he had the knowledge that Ajaib Singh went to his sugarcane field and brought home the two bags on his cycle but he showed his ignorance about the contents of those two bags. He further deposed that he advised his son Ajaib Singh to keep the bags with him and that these will be handed over to the real owner after making necessary enquiries the next day or will inform the police. But they could neither make any enquiry with regard to owner of the bags nor could inform the police next day as they remained busy in settling some dispute in the village. Enquiries were also caused from Surjit Singh who admitted that Dalip Singh alias Guru had informed him about two bags lying in the sugarcane fields of Ajaib Singh. He admitted that he had the knowledge that Ajaib Singh went to

his sugarcane field and brought home the two bags on his bicycle but he showed his ignorance about the contents of those two bags. He further deposed that he advised his son Ajaib Singh to keep those bags with him for handing over to the real owner after making enquiries or inform the police. It is further alleged that enquiries were also caused from Jagmer Singh Lambardar to ascertain the identity of unknown scooter borne persons who repeatedly met Ajaib Singh on 11.2.1997. In his statement Shri Jagmer Singh Lambardar also confirmed on 14.2.1997 that he had seen three unknown persons visiting the residence of Ajaib Singh on 11.2.1997 in the morning. Enquiries were also made from Narinder Singh Lambardar who in his statement dated 11.2.1997 confirmed that both Surjit Singh and Ajaib Singh amongst other persons remained busy in settling the dispute in the village on 11.2.1997 and added that Ajaib Singh was working as Truck Driver and visits the village occasionally. Ajaib Singh appeared before the Superintendent of Customs Amritsar on 16.2.1997. In his statement he admitted to have brought home the said two bags containing 50 packets of brown/white powder (stated to be heroin) after receiving message from Dalip Singh alias Guru. He also disclosed that on 11.2.1997 at about 7.00 A.M. three persons with muffled faces entered his house when he was sitting on the bed. One of them disclosed his identity as Avinash and who handed him over Rs. 10,000/- and told that the said bags belonged to them and they would take delivery any time during night. He received Rs. 10,000/- and put them in a polythene bag and buried the same one feet deep beside the foundation wall of the room. On 19.2.1997 Ravinder Kumar joined the investigation and tendered his statement before the Superintendent Customs, Amritsar. Shri Ravinder Kumar deposed that Pakistan national named Jaika visited the residence of Avinash Kumar in village Rampura in the mid of December, 1996 and stayed there in the night. Shri Jaika told Avinash that he spent previous night with the petitioner at his residence and that the said Jaika used to come to the residence of the petitioner earlier also. Shri Avinash and his associates namely Harjinder Singh alias Jinda petitioner, Mohinder Singh alias Minda, Avtar Singh and Ravinder Kumar had smuggled 52 packets and 48 packets of heroin in December, 1996 and January, 1997. Ravinder Kumar also stated that he accompanied the petitioner on the night of 12.1.1997 for delivery of one packet of dollars, four kasgiri lohis of Dhariwal and three bottles of whisky to the counterpart of the petitioner in Lahore named Jaika on the specified place on the bank of river Ravi. On 9.2.1997, the petitioner and his co-accused namely Avinash Kumar, Avtar Singh, Ravinder Kumar and Mohinder Singh alias Minda met in Shaheed Bhagat Singh Market, where the petitioner disclosed to Avinash that Jaika and his associates reached about 2.45 A.M. on 8/9.2.1997 and after taking over the consignment from Jaika, the petitioner and Mohinder Singh @ Minda kept the consignment in the Sugarcane fields of some farmer near village Gillanwali because of day-break. However, on the directions of Avinash Kumar, the petitioner and Mohinder Singh @ Minda again went to the said sugarcane field on the night of 9.2.1997 to retrieve the consignment which was not found there and was suspected to have been taken away by somebody. On 10.2.1997 the

petitioner and Mohinder Singh @ Minda met Avinash Kumar and Avtar Singh in Shaheed Bhagat Singh market where the petitioner and Minda told Avinash that the sugarcane fields belongs to Ajaib Singh @ Jaiba, driver of village Malikpur. In his statement dated 23.3.1997 and 24.3.1997, Mohinder Singh alias Minda admitted to have transported the seized/recovered heroin along with the petitioner and Happy. He also accompanied the petitioner and Happy on four earlier occasions and assisted the petitioner and Happy in transportation of 5 plastic bags containing something in small packets which was having pungent odour. He further disclosed that Avinash and Happy used to chalk out the programme and tell him and the petitioner that it was the petitioner and Happy who used to cross over to Pakistan and bring the contrabands from Jaikia.

4. The petitioner states that it has been alleged by the respondent that the Governor of Punjab had satisfied that the petitioner had indulged in illicit Traffic within the purview of Narcotic Drugs and Psychotropic Substances and therefore the order u/s 3(1) of the Prevention of Illicit Traffic and Narcotic Drugs and Psychotropic Substances Act, 1988 has been passed with a view to prevent the petitioner from indulging in prejudicial activities in future. The petitioner has challenged the order of detention and the order of confirmation on the ground that the petitioner has already facing prosecution under sections 21/23/29/30 of the N.D.P.S. Act, 1985 read with Section 135A of the Customs Act, 1962 in a complaint case filed by Inspector of Customs, Amritsar in the Court of Chief Judicial Magistrate, Amritsar on 3.5.1987 titled as Inspector Customs v. Manjit and Others. In the said case charge has already been framed and the matter is fixed for recording of prosecution evidence before the Special Judge, Amritsar. The petitioner applied for bail in the said case which was rejected by the Court of Additional Sessions Judge, Amritsar and also rejected by the High Court on 15.5.1998; that the petitioner made a representation against the detention of the Governor of the State of Punjab through the Superintendent of Central Jail, Amritsar, that through the detention order dated 8.6.1998 passed by respondent No. 3 it was disclosed to the petitioner that the Advisory Board in its meeting held on 25.5.1998 had opined that there was sufficient cause to continue the detention of the petitioner and the said order of detention of the petitioner was confirmed for a period of two years from the date of detention i.e. 2.2.1998. The petitioner alleges that there is no cogent evidence to connect the petitioner with the alleged recovery of heroin; that there is no rationale connection between the grounds stated by the Government for the detention of the petitioner and the object sought to be achieved/prevented under the statute. The grounds of detention are absolutely vague and no detention order can be passed even if one ground is vague because the same will render the detention illegal. The detention order which has been passed is already subject matter of prosecution launched against the petitioner and the petitioner is still facing trial; that there are no compelling reasons that the petitioner must be detained in order to prevent him from indulging in prejudicial activities. Antecedents of the petitioner are totally clear and he had a remarkable career and he has never been tried for any

offence in the past nor he was a previous offender or convict. The detention order is based on a solitary act i.e. a single incident of the alleged smuggling and there is no other material on record from which it can be inferred that he had been indulging in smuggling of narcotic previously; that there has been casual approach in passing the detention order; that there is no rational or pragmatic reason for passing the detention order which is apparently punitive in nature rather than being preventive; that there has been an abnormal delay in passing the order without any justification; that the detention order has been passed in a mechanical manner without application of mind against the settled principles of law; that by passing the detention order the guilt of the petitioner has been predetermined and that the detention authority did not take into consideration the fact that the bail application of the petitioner was declined by the Additional Sessions Judge as well as by the High Court and the petitioner has not received any communication regarding rejection of his representation. On the above allegations the petitioner has challenged the order Annexure P.1 dated 22.1.1998 passed by State of Punjab u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and order dated 8.6.1998 Annexure P. 6 passed u/s 9 sub-section (f). Section 10 sub-section (2) and Section 11 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

5. Notice of the writ was given to the respondents. Smt. Amrita Atwal filed written statement on behalf of respondents No. 1 and 3 in which she denied the allegations of the petitioner. She admitted in the affidavit that the Inspector Customs Division Amritsar had filed a complaint in the Court of Chief Judicial Magistrate, Amritsar u/s 135A of the Customs Act, 1962 read with Section 21/23/29/30 of the Narcotic Drugs and Psychotropic Substances Act and the case is already pending in the Court of Additional Sessions Judge, Amritsar. It has been stated in the reply that the representation was considered and rejected and intimation was sent to the petitioner through Superintendent Central Jail, Patiala. It has been further stated by the petitioner that the detention order of the petitioner was passed in public interest with the object of preventing the petitioner from indulging him in smuggling activities in future while the criminal trial has been initiated to punish the petitioner for his involvement in the seizure of a case of 50 kg. of heroin and that there was sufficient material for detaining the authority to order the detention of the petitioner who was involved in the seizure of 50 kgs. of heroin and his accomplices have also stated that they had smuggled large number of consignments of Narcotic in the past with the active participation of the petitioner. The smuggled consignment of the Narcotic used to be stored at the residence of the petitioner still supplied further to Delhi as stated by Ravinder Kumar alias Happy accomplice of the petitioner. But in this particular case the petitioner had partly lifted the consignment from the Border and kept in the sugarcane field of village Gillawali, P. S. Ramdas, as is evident from the statement of Ravinder Kumar alias Happy. The detention order has been passed by the detaining authority after application of mind and subjective

satisfaction. It is also stated in the reply that the petitioner was not involved in single incident of smuggling. He had gone to Indo-Pak Border along with his accomplices earlier on four occasions and brought three consignments of contrabands from Pak smuggler Jaika. The detention order was not passed with casual approach. The evidence against the petitioner was duly considered and after application of mind by the detaining authority the order of detention was passed in a legal manner. There was no delay in passing the detention order. The action is to prevent the petitioner from indulging in smuggling activities in future whereas the trial against the petitioner is pending in the trial Court at Amritsar for the offence of having committed in the seizure case of 50 kgs. of heroin. Action under the PITNDPS is independent of the offence under NDPS Act. The detention order is legally justified since he had been bringing consignments of the Narcotic Drugs from across the border on several occasions. The respondents have prayed for dismissal of the writ petition.

6. Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 lays down that the Central Government or the State Government or any Officer of the Central Government not below the rank of Joint Secretary to that Government, specially empowered for the purpose of this section by that Government or any officer of a State Government not below the rank of a Secretary to that Government, specially empowered for the purpose of this section by that Government may, if satisfied, with respect to any person (including a foreigner) that with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, if it is necessary so to do, make an order directing such person to be detained. Thus a reading of Section 3 would show that subjective satisfaction of the Detaining Authority is required with a view to prevent the person including a foreigner from engaging in illicit traffic in narcotic drugs and psychotropic substances. The basic requirement for reaching subjective satisfaction with respect to the person sought to be prevented/detained is that the application of the mind of the Detaining Authority to the material placed before it against such person and the Detaining Authority cannot be said to have satisfied subjectively with respect to that person without applying its mind to the relevant material. If this Court comes to the conclusion that there was application of mind on the part of the Detaining Authority which is basic ingredient before passing the order u/s 3, such a detention order cannot be quashed.

7. Learned counsel appearing on behalf of the petitioner submitted that the detention order is stale one because the incident of recovery is dated 11.2.1997 and the detention order has been passed on 22.1.1998 which was confirmed on 8.6.1998 after obtaining the report of the Advisor Board. He also submitted that the incident is solitary and there is delay in the disposal of the representation made by the petitioner; that the prosecution in this case has already been launched against the petitioner and in the light of the complaint u/s 21,29,30,31 read with Section 135 of the Customs Act and that action on the part of the respondents is punitive one. It was also suggested by the counsel for the

petitioner that the Detaining Authority did not take care of the fact that the petitioner was in custody as on 22.1.1998 and that his bail application was rejected on 3.2.1997 by the Court of Sessions and by the High Court on 15.5.1997 and in these circumstances there is hardly any act which could be termed as prejudicial on the part of the petitioner. On the contrary it was submitted by the learned counsel for the respondent that the counsel for the petitioner is confusing the issue. There is no bar in launching the proceedings u/s 3 of the PITNDPS Act irrespective of the fact that the petitioner was being prosecuted for the alleged recovery and possession of 50 kilograms of heroin allegedly found by the Customs Authorities on 11.2.1997. The learned Deputy Advocate General submitted that distinction has been drawn for the offence already committed by the petitioner and for those acts which are likely to be committed by the petitioner in future prejudicial to the interest of the State. For the subsequent act, the petitioner can also be detained under PITNDPS Act, 1988. The learned Deputy Advocate General also submitted that there was sufficient evidence and material before the Detaining Authority in the statement several accomplices of the petitioner who had unfolded the entire mystery how the petitioner had been indulging in the trade of importing heroin across the border with the assistance of Pakistan smuggler Jaika. All these aspects were taken into consideration by the Detaining authority and ultimately the Detaining Authority came to the subjective satisfaction that the detention of the petitioner has become necessary.

8. After considering the rival contentions of the parties, I am of the considered opinion that the order has been passed in conformity of the PITNDPS Act. There was enough material before the Detaining Authority from which the subjective satisfaction could be clearly made out. The grounds of detention are part and parcel of the detention order. The grounds of detention clearly indicate that there was thorough and searching investigation under what circumstances the heroin was found in the house of Smt. Manjeet Kaur. The Government might be aware that since the heroin has not been found from the actual possession of the petitioner but the source of smuggling has been detected. It has come in the statement of the official witnesses that earlier the petitioner brought certain consignments from across the border of Pakistan it has become necessary to check his movements otherwise those movements would be prejudicial to the interest of State. For the alleged possession leading to the actual recovery of the heroin on 11.2.1997, the petitioner has committed substantive act which is under the gauge of scanning of the judicial courts. Apart from that the act and conduct of the petitioner is also prejudicial which required check and the Detaining Authority has sufficient material before it so as to pass order of detention Annexure P. 1. The bail order dated 3.9.1998 and 15.5.1998 are with respect to the incident of recovery of the heroin made on 11.2.1997. The delay per se is not fatal in every case. Thorough investigation was required and Customs Authorities investigated and recorded statements of the persons and then made out a case for detention against the petitioner and the matter was

sent with the recommendation of the State Authorities who passed order of detention dated 22.1.1998. The matter was put up before the Advisory Board which recommended the detention of the petitioner and finally the order of detention was confirmed vide Annexure P. 6 dated 8.4.1998. In these circumstances, it cannot be said that the action on the part of the respondent was punitive in nature. There was chain of acts on the part of the petitioner leading to the smuggling of the activities which is definitely prejudicial to the interest of the State.

9. Learned counsel for the petitioner has relied upon *Gayur Ahmed v. State of Punjab and Others* 1995 Recent Criminal Reports 282. The facts in this case are totally distinguishable. In the said case the order of detention was served upon the petitioner after 11 months. Further it was held by his Lordship that the Detaining Authority was not really and genuinely satisfied as regards the necessity for detaining the detainee with a view to prevent him from indulging in smuggling activities. Here is the case where the petitioner has been consistently indulging in the smuggling activities. The action taken by the respondent authorities cannot be held to be punitive. Learned counsel for the petitioner also relied upon *Amarjit Singh v. Secretary of Government of Punjab* 1996 (2) RCR 572. This authority is also not helpful to the petitioner. Here is a case where the investigation was required after actual seizure of the heroin. Learned counsel also relied upon the *Dharmendra Suganchand Chelawat v. Union of India and Others*. If this case is read between the lines, can again be distinguished on the face of it. It is true that bail application was declined by the Court of Sessions as well as by the High Court prior to the passing of the order Annexure P. 1 and P. 6 yet from the detention order it is clear that Detaining Authority was satisfied that the activities of the petitioner will be prejudicial and hence the detention order was passed. Assistance was also taken from *Charan Singh alias Charan Mehra v. Secretary to Government Punjab and Another* 1990 (2) RCR 106. *Anant Sakhrum Raut v. State of Maharashtra and Another* 1998 (1) RCR 619, *Mastan Singh v. State of Punjab* 1990 (3) RCR 200 and *Pipal Singh v. State of Punjab* 1997 (2) RCR 600. I have gone through all the citations. None of the citations could come to the rescue of the petitioner. Every case has to be seen from its own facts. The incident dated 11.2.1997 has to be examined separately with the activities of the petitioner. The petitioner is not being detained for the alleged recovery dated 11.2.1997 but on account of consistent prejudicial activities which became known to the authorities in the shape that the petitioner had been going to Pakistan to arrange heroin/morphine drugs. The action was not punitive in nature but was preventive in nature.

10. Resultantly I do not see any infirmity in the impugned orders. I also do not find any merit in the writ petition and dismiss the same.