
(1984) 07 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 208 of 1984

Harnek Singh and ors.

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 16-07-1984

Acts Referred:

Citation : (1985) 1 AICLR 436

Hon'ble Judges : M.M.Punchhi, J

Advocate : H.S. Nagra, G.S. Grewal, D.S. Brar, Advocates for appearing Parties

Judgement

M.M. Punchhi, J.

1. In these Criminal Writ Petitions Nos. 208, 220 and 225 of 1984. the action of the State of Punjab has been challenged, placing seven detenus, respectively named therein, at Fetehgarh Central Jail, District Farrukhabad, Uttar Pradesh, a place outside Punjab. The grouse voiced herein is that when the detention orders had been passed in the State of Punjab and the detenus belonged to the State of Punjab, there was no occasion for the place of detention to be fixed outside the State of Punjab. A.K. Roy's case reported in A.I.R. 1982 Supreme Court 710, is the spearhead for the argument.

2. The detenus concerned with Cr.W.P. No. 208 of 1984 are Dalbir Singh. Satnam Singh, Mohinder Singh Jassal and Swaran Singh belonging to different villages in District Patiala. The detenus concerned with CrW.P. No. 220 of 1984 are Balwinder Singh and Jaswant Singh belonging to a village in District Kapurthala. The detenu concerned with Cr W P No. 225 of 1984 is Toga Singh belonging to a village in District Bhatinda; all of which are in the State of Punjab. They were in the first instance confined in the Central/District Jails of their respective districts but were ordered to be transferred by the Governor of Punjab on 9.5.1984 under section 5 (b) of the National Security Act, 1980 to Fatehgarh Central Jail, Uttar Pradesh, vide JUDGMENT No. 1558/SDSB/S2 dated Chandigarh the 9th May, 1984. They are described at Serial Nos. 4 to 10 therein. A copy of the order has been placed on file as. Annexure `R2/I'.

3. The facts giving rise to these petitions are practically similar. As said before, the petitioners were arrested, and detained for a day or so in respective Central/ District Jails & their districts. They were transferred to Fatehgarh Central Jail (Uttar Pradesh). According to the reply of the Home Secretary to the Government Punjab, they were shifted to Uttar Pradesh keeping in view the disturbed conditions prevailing in the State of Punjab. The transfer had, according to him, been done solely on administrative grounds & not by way of any punitive measure. There were statedly unavoidable exceptional circumstances, and the disturbed conditions prevailing in the State of Panjab necessitated the transfer of the detenus to places away from their homes because detention in a jail proximate to their homes would have defeated the very purpose for which the detention had been passed. Reasons of safety security and maintenance of public order due to the disturbed conditions prevailing in the State of Punjab necessitated the action.

4. It was also stated by the Home Secretary that the detenus are active members of All India Sikh Students Federation which organisation has been banned by the Union of India under section 3 of the Unlawful Activities (Prevention) Act, 1967. The Government had information that they and their other coassociates took part in the conventions held inside Gurdwara Dukh Niwarn Sahib (Patiala) on 13.10.1983 and 18.2.1984 under the presidentship of Shri Harvinder Singh Khalsa, Vice President of the All India Sikh Students Federation. At those meetings, the conventions resolved to kill Nirankaris, Hindus and police officers and to unback reign of terror in Punjab by indiscriminate killings to achieve the goal of Khalistan. The prejudicial activities of the detenus in inciting and encouraging communal violence against Hindus for the creation of khalistan were of such a nature so as to lead to communal riots and bloodshed in the State by killing Nirankaris, Hindus and police officers. And thus in the interest of law and order, security of State, Public safety and public interest, it was not desirable to keep the detenus in jail in the State of Punjab in view of the peculiar nature of the activities of the detenus and the following they commanded under the binned All India Sikh Students Federation. Further it was claimed by the Home Secretary that if the detenus were detained in jail in Punjab, they were likely to incite communal violence through their visitors to jail, and their supporters were likely to attempt their release from jail by any mean thereby frustrating the very object of detention.

5. These facts have commonly been stated as culled down by respective counsel from the pleadings and as projected by them in Court". As the point involved herein as to the place of detention in these circumstances is common it thus requires the disposal of these petitions by a common order.

6. In A.K. Roy v. Union of India and another, A.I.R. 1982 Supreme Court 710, the Supreme Court in paragraph 74 of the report observed as follows :

"By Section 5, every person in respect of whom a detention order has been made is liable :

(a) to be detained in such place and under such conditions including conditions as to maintenance, discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether in the same State or in another State, by order of the appropriate Government.

The objection of the petitioners to these provisions on the ground of their unreasonableness is not wholly without substance. Laws of preventive detention cannot, by the backdoor, introduce procedural measures of a punitive kind. Detention without trial is an evil to be suffered, but to no greater extent and in no greater measure than is minimally necessary in the interest of the country and the community. It is neither fair nor just that a detenu should have to suffer detention in such place" as the Government may specify. The normal rule has to be that the detenu will be kept in detention in a place which is within the environs of his or her, ordinary place of residence. If a person ordinarily resides in Delhi, to keep him in detention in a far off place like Madras or Calcutta is a punitive measure by itself which, in matters of preventive detention at any rate, is not to be encouraged. Besides, keeping a person in detention in a place other than the one where he habitually resides makes it impossible for his friends and relatives to meet him or for the detenu to claim the advantage of facilities like having his own food. The requirements of administrative convenience, safety and security may justify in a given case the transfer of a detenu to a place other than that where he ordinarily resides, but that can only be by way of an exception and not as a matter of general rule. Even when a detenu is required to be kept in or transferred to a place which is other than his usual place of residence, he ought not to be sent to any far off place which, by the very reason of its distance, is likely to deprive him of the facilities to which he is entitled. Whatever smacks of punishment must be scrupulously avoided in matters of preventive detention." (Emphasis supplied).

7. It is plain from the emphasised words that the detention of the detenus in Fatehgarh Central Jail is not in the observance of the normal rule but is by way of exception. The exception plainly has to satisfy three tests :

(i) it was resorted to for administrative convenience, safety and security;

(ii) it is not at a far off place, the distance not depriving the detenu the facilities to which he is entitled; and

(iii) it does not smack of any punishment.

8. To satisfy the first test, the pleadings of the State on the affidavit of the Home Secretary aforementioned speak for themselves. Besides the return, the record was produced before me. I was satisfied from the material available on the file that the State was apprehensive of tension and communal trouble due to the presence of the detenus in jails of Punjab : as their very presence at convenient

places in the State of Panjab could foment and incite communal violence especially when frequent visitors could be in communion with them That there were disturbed conditions in the State of Punjab is beyond doubt wherefore in the first instance the Punjab Disturbed Areas Ordinance, 1983 was promulgated on 7.10.1983 and therefore the Punjab Disturbed Areas Act, 1983 was passed retrospectively from 7.10.1983. Punjab was thus undoubtedly a disturbed area. The activities of the detenus, which may have justified the detention orders, further justified for administrative convenience their placement outside the State. Further, the safety and security" not only of the detenus but of the State and its citizens justified that in those peculiar troubled conditions, their place of detention be outside the State of Punjab as permitted under section 5 (b) of the Act. The action of the State thus satisfies the first test and I hold it accordingly.

9. The second test relates to the distance. The learned counsel for the detenus maintained that contiguous to the State of Punjab were the States of Jammu and Kashmir, Haryana and Rajasthan, besides the Union Territory of Chandigarh and the State of Panjab was required to accommodate the detenus in these territories in the first instance rather than straightaway place them in the State of Uttar Pradesh. It is plain from order, Annexure "R2/1" that the State of Uttar Pradesh was consulted and it consented to have the detenus with it. No rule or precedent has been quoted by the learned counsel before me making it incumbent on the State to consult its immediate neighbours in the first instance. Equally, no rule or principle could be pointed out by the learned counsel, or a precedent wherefrom it could be discerned that the detaining State could only put for a place of detention for the detenus in another State after exhausting all avenues for accommodating them in their immediate neighbouring States. It has thus in the instant cases only to be seen whether the place of detention is far off from the ordinary places of residences of the detenus. The distance from Delhi to Fatehgarh is averred to be about 324 Kms. Punjab being a State which is close to Delhi. the small State of Haryana only intervening, is barely half a day's travel by road from any point in the State of Panjab. The State's stance that it takes less than twenty four hours to reach Central Jail, Fatehgarh from Punjab is well based on realities. The place Fatehgarh is stated to be connected by rail as well as by road. In the situation, it can hardly be said that Fatehgarh is a far off place. It can equally be not said that such distance was likely to deprive the detenus the facilities to which they were entitled.

10. An off shot of the argument based on distance was that under section 5 (a) of the National Security Act, the Government was required by general or special order to specify with regard to every person in respect of whom a detention order had been made as to in which place he was to be detained and under what conditions. It was asserted that the Governor of Punjab had on 27th March, 1981 issued the Punjab Detenus (Conditions of Detention) JUDGMENT 1981 specifying the places situated in the State of Punjab where detenus could be detained. On that strength it was asserted that in the presence of that order, the detenus could in no event be sent outside the State of Punjab as that would tend to lead

to discrimination violative of Article 14 of the Constitution. The argument is obviously misplaced. It totally ignores section 5(b) of the Act and the Government's overall power under section 5 to place detenus outside the State. A special order pertaining to the detenus involved herein was passed on 9th May, 1984, as is plain from Annexure "R.2/1" placed on file. This specific order holds sway over the Punjab Detenus (Conditions of Detention) JUDGMENT 1981. The second branch of the argument that conditions of detention have to remain those as provided under the Punjab Detenus (Conditions of Detention) JUDGMENT 1981 has been raised without specifically alleging that the conditions of detention as in the Uttar Pradesh Jail are in comparison less favourable to the detenus. In any case this Court in Sukhpal Singh and another v. State of Punjab and others, 1984 Criminal Law Journal 428, has taken the view that conditions of detention of a detenu would be governed by the rules of the State to which he is transferred. There is no substance in the either limb of the argument which is hereby repelled. Thus, I hold the second test satisfied.

11. The third test is that the placement of the detenu in another State should not smack of punishment. What smacks of punishment is a question of fact in each case. It is the totality of circumstances which have to account whether it smacks of any punishment. In this context, it was urged that it was difficult for the detenu to have his bedding and clothing arranged to his requirements or to have his meals to his taste regulated within the diet allowance given. The petitions are deficient of any clear pleading in that regard as to where lies the pinch specifically. The argument was based on suppositions merely because the place of detention was distantly apart from the State of Punjab. No material is available to show how any punishment is sought to be afflicted on the detenus. The inconvenience of their supposed visitors can hardly be a relevant consideration in determining the same. Thus, the third test too is satisfied and I hold it accordingly.

12. Thus, keeping in view the entirety of the situation and the surrounding circumstances, no fault can be found with the satisfaction of the Government and the consequent step that the detenus be detained at a place outside Punjab at Fatehgarh in Uttar Pradesh. Therefore, all the tests or exception to the general rule are satisfied, calling for no interference thereto by this Court.

13. Before concluding this order, it need be observed that the learned counsel for the petitioners did not press the point as raised in the petitions with regard to the nonsupply of the information about the detention of the respective detenus to their near ones as specified under the law. The respective District Magistrate had averred that such information was supplied. In view of this clear assertion, the argument was rightly not raised.

14. No other point was urged.

15. For the foregoing reasons, there is no merit in these petitions which fail and are hereby dismissed. No costs.