
(1994) 10 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 256 of 1994

Hasamuddin and anr.

APPELLANT

Vs

Secretary to Government Punjab

RESPONDENT

Date of Decision : 05-10-1994

Acts Referred:

Citation : (1995) 1 AICLR 173 : (1994) 3 RCR(Criminal) 652 : (1995) 1 RCR(Criminal) 258

Hon'ble Judges : G.S.Singhvi, J

Advocate : Arun Kumar Walia, A.S. Sandhu, Advocates for appearing Parties

Judgement

G.S. Singhvi, J.

1. These two petitions have been filed by the petitioners with a prayer to quash their detention orders dated 3.5.1993 and 5.11, 1993, respectively and the confirmation orders dated 9.2.1994 and 22.2.1994, since identical grounds have been taken for challenging the impugned orders, these petitions are being disposed of by a common order.

2. Brief facts of Criminal Writ Petition No. 256 of 1994 are that petitioner Hasamuddin was arrested on 24.3, 1992 under section 104(1) of the Customs Act, 1962. He was released on bail by the competent Court on 1.4.1992. He was detained under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, on the basis of order (Annexure P1). Though the order was issued on 3.5.1993, the petitioner was actually detained on 5.11.1993, i.e. after six months of passing of the order, of detention. JUDGMENT of confirmation was issued by the Government on 9.2.1994. The petitioner has questioned the order of detention as well as the order of confirmation on various grounds set out in the petition one of which is that the order of confirmation has been passed in contravention of the provisions of Section 8(f) of the COFEPOSA Act.

3. In Criminal Writ Petition No. 258 of 1994, brief facts are that petitioner Ranjit

Singh was arrested on 18.3.1993 under Section 104(1) of the Customs Act, 1962. He was granted bail by the High Court on 26.7.1993. He was once again arrested on 19.11.1993 and was served with a detention order dated 5.11.1993. The order of confirmation was passed by the Government on 22.2.1994. The grounds of challenging the detention orders as well as the confirmation order are identical to those raised in Criminal Writ Petition No. 256 of 1994.

4. Almost identical replies were filed by the respondents. The orders of detention have been justified on facts. It has been alleged that the petitioners have been found guilty of smuggling gold from Pakistan and their activities are prejudicial to the public interest. Detailed explanation has been given for the delay caused in passing of confirmation orders.

5. During the course of hearing, learned counsel for the petitioners brought to the notice of the Court that in Criminal Writ Petition No. 202 of 1994 (Sakattar Singh v. The Secretary to Government of Punjab, Department of Home Affairs and Justice and another), this Court has quashed the order of detention and the confirmation order vide its judgment dated 23.8.1994. Learned Assistant Advocate General has not been able to point out any distinguishing feature in these petitions as against the case of Sakattar Singh.

6. In that case, a learned Single Judge of this Court referred to the provisions of the Act and Article 22(4) of the Constitution and observed that :

"If Section 8(f) is read in the light of Article 22(4) of the Constitution, it leads to the conclusion that sine qua non for continuing the detention made beyond the period of three months, is the confirmation of detention order by the Appropriate Government. This precise question came up for consideration before the Supreme Court in Shibapada v. State of West Bengal, AIR 1972 SC 1356 and Nirmal Kumar Khandelwal v. The Union of India and others, AIR 1978 SC 1155. It would be appropriate to note the following paragraphs of the judgment in Nirmal Kumar Khandelwal's case (supra) :

"8. The observations extracted above, apply mutatis mutandis to the language of Cl. (f) of S. 8, which is similar. This clause runs as follows :

"8. For the purposes of SubCl. (a) of Cl. (4) and subCl. (c) of Cl. (7), of Article 22 of the Constitution,.....

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith." (Emphasis supplied)

The key words in Cl. (f) are those which have been underlined. These very words

were also employed in S. 12(1) of the West Bengal Prevention of Violent Activities Act, 1970, the interpretation of which had come up for consideration in the context of Art. 22(4) of the Constitution in *Ujjal Mandal's case* (A.I.R. 1972 S.C. 1446). These words also occurred in Sections 10 and 11 of the Preventive Detention Act, 1950, which were in *peri materia* with Sections 11 and 12 of the Maintenance of Internal Security Act, 1971. The expression "may confirm" in Cl. (f) of S. 8 is significant. It imports a discretion. Even where the Advisory Board makes a report that in its opinion, there is sufficient cause for the detention concerned, the Government may not confirm the detention order. Read in the light of Article 22(4) of the Constitution and the context of the words "continue the detention", they definitely lead to the conclusion that the *sine qua non* for continuing the detention made beyond the period of three months, is the confirmation of the detention order by the appropriate Government. Conversely, the nonconfirmation of the initial order by the appropriate Government before the expiry of the period of three months" detention, shall automatically result in revocation and termination of the legal authority for its continuance. This position is further clear from the language of S. 10, which provides "the maximum period for which any person may be detained in pursuance of any detention order.....which has been confirmed under Cl. (f) of S. 8, shall be one year from the date of detention". The crucial words in the Section are : "which has been confirmed under Cl. (f) of S. 8". They underscore the same policy which underlies, the constitutional mandate in Art. 22(4). These words put it beyond doubt that if the initial order of detention is not confirmed by the appropriate Government within three months of the date of the detention, the detention after the expiry of that period *ipso facto* unauthorised and illegal.

10. There is no reason to doubt the law enunciated by this Court in the aforesaid decisions. Respectfully following the ratio of those decisions, we hold that since no order of confirmation of the detention was made under Cl. (f) of S. 8 within three months of the date of detention by the appropriate Government, further detention of the petitioner after the expiry of that period is without the authority of law."

In both these cases before the Supreme Court, the detention order was quashed on the ground that the order confirming the detention made under Clause (f) of Section 8 of the 1974 Act was passed after the expiry of three months from the date of detention by the appropriate Government. Concededly, in the present case, detention order has been confirmed by the appropriate Government after the expiry of period of three months and 5 days" delay of detention of the petitioner. In view of the admitted position of fact and in light of judgments of the Supreme Court in *Shibapada's case* (*supra*), the detention order is liable to be quashed."

7. Since the cases of the petitioners are identical to that of *Sakattar Singh*, these petitions deserve to be allowed for the same reasons which have been set out in the order dated 23.8.1994 rendered in *Sakattar Singh's case* (*supra*).

8. Consequently, the writ petitions are allowed and the orders of detention as well as the orders of confirmation passed by the Government are quashed and respondents are directed to release the petitioners forthwith.