
(1989) 09 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 705 of 1989

Jagtar Singh

APPELLANT

Vs

Union of India and anr.

RESPONDENT

Date of Decision : 08-09-1989

Acts Referred:

Citation : (1990) 1 AICLR 76 : (1990) 1 CurLJ 125 : (1990) 1 RCR(Criminal) 30

Hon'ble Judges : S.D.Bajaj, J

Advocate : Harjinder Singh, Sukhbir Singh, Jaishree Anand, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. On 24th December, 1988 detenupetitioner Jagtar Singh was arrested by the officers of the Directorate of Revenue Intelligence on the allegations of having kept concealed inside Flat No. 293, IZ Area, Gole Market, New Delhi, 210 foreign marked gold biscuits, transported from Amritsar to Delhi in Maruti car No. DBG7927. While the petitioner was still in judicial custody, confined inside Tihar Jail, New Delhi, detention order Annexure P. 1, based on grounds of detention Annexure P. 2 was served on the petitioner under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended upto date) on 7th January, 1989.

2. Validity of the detention order Annexure P. 1 has been assailed by the detenupetitioner Jagtar Singh in Cr. W. P. No. 705 of 1989 on the grounds that supply of documents asked for by the petitioner having been delayed till 30th March, 1989, the petitioner was prejudiced in exercise of his right to make an effective representation against his detention to the detaining authority and the Advisory Board, that there was no compelling necessity requiring the making of an order of preventive detention against the petitioner who was already confined in Tihar Jail with effect from 24th December, 1988 when the order of detention came to be passed against him on 17th January, 1989, that consideration of ineffective representation aforesaid filed by the petitioner on 3rd March, 1989

was unduly delayed by the detaining authority for an inordinately long period of 27 days and that the detention order was made without any application of mind much less on subjective satisfaction of the detaining authority. In reply filed by Shri Kuldip Singh, Under Secretary to Government of India, it was asserted that the detention order Annexure P. 1 was made against the petitioner on subjective satisfaction of the detaining authority after due application of mind to the peculiar facts and circumstances obtaining in the present case that there was no unexplained inordinate delay attributable to the detaining authority in the disposal of the representation because it dealt with and disposed of the same within a week from receipt of the comments from the sponsoring authority on 23rd March, 1989, that it was known to the detaining authority while making the order of detention that the petitioner was already in judicial custody and confined inside Tihar Jail but inspite of it the detaining authority still felt on its subjective satisfaction that it was necessary to make the order of preventive detention against the petitioner because the possibility of his being admitted to bail by the competent court on his application moved for the purpose could not be ruled out and that necessary documents were all supplied the petitioner together with the grounds of detention when the detention order was served upon him inside Tihar Jail

3. I have heard Shri Harjinder Singh, Advocate, for the petitioner, Mrs. Jaishree Anand, Advocate, for the respondents and have carefully gone through the material on record.

4. The first and foremost ground of attack against the validity of the detention order Annexure P. 1 has been that the petitioner being already in custody with effect from 24th December, 1988, could not possibly indulge in any prejudicial activity thereafter and as such the order of detention dated 17th January, 1989 passed by the detaining authority against him was punitive in nature.

5. The only justification offered by the detaining authority in the grounds of detention Annexure P. 2 is that the possibility of detenu petitioner being bailed out by the concerned court on his application made for the purpose could not be ruled out by it.

6. Dealing with similar situation in Smt. Shashi Aggarwal v. State of U.P. and others, 1988(1) Recent Criminal Report 579 (SC) : AIR 1988 Supreme Court 596 their lordships of the Supreme Court observed :

"Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land if the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. These must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act

prejudicially to the interest of public order. Where the detention order was passed against the detenu, who was already in jail, merely on the ground that the detenu was trying to come out on bail and there was enough possibility of his being bailed out and there was no material on record to show that the detenu, if released on bail, was likely to commit activities prejudicial to the maintenance of public order the order of detention will be illegal. In this particular case only a single act of concealment of foreign marked gold biscuits is attributed to the petitioner and no allegation like the one adverted to by the Supreme Court in the authority cited is forthcoming either in the order of detention Annexure P. 1 or grounds of defamation Annexure P. 2. Detention of the petitioner thus gets vitiated on this score.

7. Again relevant portion of paragraphs 2 and 3 of Memorandum No. 686/109/89CUS. V111 dated 30th March, 1989, Annexure XVIII reads. "He is also informed that his ground of arrest was given to him vide Arrest Memo dated 15121988. The translations into Gurmukhi has been done by the Punjabi Academy and is absolutely correct As his case is commenced with other codetenus all the documents relating to all of them had to be supplied to him Pages No. 54, 14, 75 and 79 of the documents are enclosed as desired by him." It is thus conceded that all the requirements needed by the petitioner for making an effective representation against his detention were not supplied to him by the detaining authority till 30th March, 1989. As held in *Vinod Kumar Arora v. The Administrator, Union Territory of Delhi and others*, 1984(2) RCR(CrL.) 309 (Delhi) : 1984 Cri. L. J. 1344 and *P. Moid Haji and another v. Union of India and others*, 1985 Cri. L. J. 1430, detention of the petitioner gets vitiated on this score as well. The relevant observations made by the Supreme Court in this behalf read. "This Court in a number of cases has further held that the copies of documents which have been referred to in the grounds (if detention but not relied upon by the detaining authority have to be supplied to the detenu if he seeks copies of the same. On such a request being made by the detenu, it is not for the detaining authority to conclude that the copies of documents sought for were not relevant even for the defence of the detenu. It is for the detenu to consider as to how he can show his innocence from those documents ... We do not consider that it is necessary in the facts and circumstances of the case as brought out in the pleadings of the parties and from the documents which are on record to decide that all the documents mentioned in (a) to (i) of para 6 were actually relied upon by the detaining authority. However, it has to be held that all the pages of the diary have been referred to in the grounds of detention. In our view non-supply of copies of all the pages of diary sought for vide his representation dated Feb. 16, 1985 has resulted in depriving the detenu from making an effective representation. If asked for the documents have to be supplied to the detenu to enable him to make an effective representation."

8. Thirdly, the representation dated 3rd March, 1989 was rejected on 30th March, 1989. Explanation offered for this delay in para 14 of the reply is, "The allegation made in this para is denied. There had not been any undue or

unexplainable delay in considering the representation of the petitioner. It is submitted that the representation dated 6389 was received in this office on 8389. The same was shown to the Detaining Authority on the same date who desired that parawise comments as well as the documents be obtained from the concerned sponsoring authority. The representation was forwarded to the concerted sponsoring authority for their comments and documents on the same date i.e. 8389. The parawise comments were received vide the letter of the sponsoring authority dated 23389 on 27389 (24, 25 and 26th were holidays being Good Friday, Saturday and Sunday). During the period of 8389 till 23389 there were 4 holidays being Saturday and Sunday. The representation alongwith the parawise comments was processed and put up for consideration to the Central Government i.e., M.O.S. (R) and Finance Minister through the Detaining Authority on 27389. The Detaining Authority forwarded the representation alongwith his report to MOS (R)/FM on 27389. The MOS (R) considered the representation and rejected the same subject to approval of FM on 28389. FM finally rejected the said representation on 29389 and the Memo of rejection was issued on 30389 wherein all the particulars and documents asked for were supplied to. the detenu. Hence it is denied that there had been any inordinate delay in considering the said representation." Adjudicating upon it in *Rajender Pd. Khanna v. Union of India and others*, 1983(3) Crimes 829, a Division Bench of the Delhi High Court quoted with approval observations made by the Supreme Court in case *Saleh Mohammed v. Union of India*, AIR 1981 SC 111 as follows :

"Such a plea was raised before the Supreme Court in *Saleh Mohammed v. Union of India* while dealing with the question whether the functionaries of the State were also obliged to deal with the representation expeditiously, it was held :

"Times out of number, this Court has emphasised that where the liberty of an individual is curtailed under a law of preventive detention, the representation, if any, made by him must be attended to, dealt with and considered with watchful care and reasonable promptitude lest the safeguards provided in Article 22 (5) of the Constitution and the statute concerned should be stultified and rendered meaningless. Here in the instant case, we find that the functionaries of the State in attending to the representation of the detenu have been guilty of gross negligence and chill indifference. For, more than three weeks, the representation of the detenu remained lying unattended in the Office of the Superintendent of Jail or the Inspector General of Prisons. This inordinate, unreasonable and unwarranted delay of about 22 days amounted to a violation of Article 22 (5), which guarantees to the detenu a right to have his representation considered with reasonable expedition. It was on this short ground that we had, as per our order dated August 2031980 allowed this writ petition, quashed the order of *Saleh Mohammed's* detention and[directed his release forthwith."

We held that the delay in the present case has neither been explained nor accoutred for this ground by itself lis sufficient to invalidate the continued detention of the detenu. We order accordingly.

9. In line with the Supreme Court observations aforesaid inordinate and unexplained delay of 27 days in the disposal of the representation has to be held as fatal which invalidates the detention of the detenu petitioner Jagtar Singh.

10. Detaining authority having not adverted to the consideration of compelling circumstances for detaining the petitioner on 17th January, 1989 when he was admittedly in jail with effect from 24th December, 1988, detention order Annexure P. 1 has to be regarded as having been made by it without due application of mind and is consequently to be held as not based on its subjective satisfaction. In result Criminal Writ succeeds and is allowed. Detenupetitioner Jagtar Singh is ordered to be set at liberty forthwith, if not required in any other case.