

(1987) 11 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 848 of 1987

Jaswinder Singh alias, Jaga

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 18-11-1987

Acts Referred:

Citation : (1988) 1 AICLR 486 : (1988) 2 RCR(Criminal) 580

Hon'ble Judges : K.S.Bhalla, J

Advocate : S.K. Bhatia, G.S. Manuali, Advocates for appearing Parties

Judgement

K.S. Bhalla, J.

1. Petitioner Jaswinder Singh was detained pursuant to an order of detention dated 141987 issued by the District Magistrate, Faridkot who it respondent No. 2 here under.

In under Section 3(2) of the National Security Act, 1980. The detention is based on various incidents with regard to which three different first information reports were registered under various provisions of law as mentioned in the grounds for detention reproduced in para No. 3 of the petition and the latest of the said information reports is dated 1341996.

2. Asper admissions made in the written statements, the order of the detention has been correctly reproduced in para No. 2 of the petition that grounds for detention have been reproduced in para No. 3 and that the petitioner was already in custody and lodged in jail the time of the making of the order although this fact is not made out from the detention order. Undisputably it is a preventive measure and it is mentioned in the order itself that the same was made with a view to prevent Jaswinder Singh from acting in objectionable and prejudicial manner in future. Petitioner being already in jail could not have possibly indulged in any such activities. Conspicuously enough it is neither mentioned in the detention order in any manner whatsoever that there was any possibility of the petitioner being released. In this situation of the matter it was not proper to

exercise power of preventive detention.

3. From the material placed before me, I find that there was no nexus between the alleged activities and the detention order which was made after one year of the last incident out of the list provided in the grounds of detention. There do not appear to be any application of mind by the authority making the detention order and the same perhaps was made just in a mechanical thinner. In the detention order it is said that JaswinderSingh alias Jaga be arrested and detained in the District Jail, Faridkot. A direction was also made to the Senior Superintendent of Police Faridkot to lodge him in District Jail Faridkot. Petitioner being already in custody, question of his at did not arise and similarly as he was already lodged in jail Senior Superintendant of Police could not have possibly so lodged him. At the relevant time petitioner was in District Jail, Sangrur and not in District Jail, Faridkot for which reason subsequent order for lodging him at Sangrur had to be made. This is an added reason to indicate that there was no application of mind by the detaining authority. I have gone through the detention order carefully. There is absolutely no mention in the order if the petitioner was already in custody when the petitioner was arrested since when he was an undertrial and if at any step taken by him for his release on bail. All this indicates total absence of application of mind on the part of the detaining authority while Passing the order. One does not know how the detaining authority would have acted if he was made aware of the above details.

4. The power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence which as shown above is badly lacking in this case. If a man is in custody and there is no, imminent possibility of his being released, power of preventive detention cannot be exercised. This, conclusion of mine is reinforced by *Ramesh Yadav v. District Magistrate, Etah and others*, AIR 1986 S.C. 315 and *Binod Singh v. District Magistrate, Dhanbad, Bihar and others*, A.I.R. 1986 S.C. 2090.

5. For the foregoing reasons, it cannot be said to be a fit case to resort to preventive detention and the petitioner is entitled to succeed on said short ground.

6. I accordingly hold that there was clear nonapplication of mind on the part of the detaining authority about the facts that the petitioner was already in custody and that there was no imminent possibility of release of the petitioner when the order of detention was passed. The order of detention dated 14/1/1987, therefore, is set aside the writ petition is allowed to the extent indicated above. This, however, will not affect detenu's detention under the criminal cases in case the detenu is released on bail in the aforesaid cases, the matter of service of the detention order under the Act, on the aforesaid materials, may be reconsidered by the appropriate authorities in accordance with law. There is no statement in

the petition that the detenu is on bail. There will, therefore, be no order for release of the detenu.

JUDGMENT accordingly.