

(1994) 04 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 563 of 1993

Kanwarjit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Customs Act, 1962 — Section 108, 135(1)
Gold (Control) Act, 1968 — Section 185
Penal Code, 1860 (IPC) — Section 107

Citation : (1994) CriLJ 2764 : (1994) 2 RCR(Criminal) 704

Hon'ble Judges : H.K. Sandhu, J

Bench : Single Bench

Advocate : A.S. Sandhu and R.S. Randhawa, for the Appellant; D.D. Sharma, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sandhu, J.—The present petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing the detention order dated 21-1-1988 (Annexure P-I) and the grounds of detention (Annexure P-1/A) passed by Joint Secretary to Government of India, Ministry of Finance, Department of Revenue New Delhi in exercise of the powers, conferred by Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to prevent the petitioner from abetting the smuggling of goods.

2. The brief facts of the case are that on 6-1-1988 a specific Intelligence report was received by the Delhi Zonal Unit of Directorate of Revenue Intelligence, that Kanwarjit Singh alias Pahalwan, the present petitioner was responsible for smuggling of huge quantity of foreign marked gold from Dubai into India via

Pakistan. It was further indicated that the petitioner was arranging the smuggling of gold into India with the assistance of international Smuggling Syndicate operating from Dubai, Pakistan and India and one Virsa Singh was looking after the movement and disposal of smuggled gold in India. The petitioner had arranged for smuggling of 520 foreign marked gold biscuits into Amritsar sector of Indo-Pak border which would be reaching Delhi in the evening of 6-1-1988 concealed in truck No. DIL 1677 and Virsa Singh was to take delivery of those gold biscuits at Delhi for ultimate disposal in Delhi Market. In pursuance of this information truck No. DIL-1677 was intercepted at Kundli on Delhi-Haryana border by the officers of the Directorate Revenue Intelligence, New Delhi, Multan Singh and Malkiat Singh were the occupants of the truck at that time. They along with the truck were taken to the Complex of the Office of the Directorate of Intelligence Revenue, Lodhi Road, New Delhi and search of the truck was carried out in the presence of two witnesses. On opening of the cavity at the top of the wooden partition separating the drivers cabin, from the rear portion of the truck, 520 foreign smuggled gold biscuits of 10 tolas each valued at Rs. 2.12 crores were recovered. These were seized along with the truck under the Customs Act, 1962.

3. Statements of Virsa Singh and Nirmal Singh were recorded u/s 108 of the Customs Act wherein they stated that Kanwarjit Singh was the mastermind in the smuggling of contraband goods and its disposal. Residential premises of Kanwarjit Singh were searched but nothing incriminating was recovered. A complaint was, however, filed against the petitioner u/s 135(1)(b) of the Customs Act read with Section 185 of the Gold Control Act, 1968 in the Court of Additional Chief Metropolitan Magistrate, New Delhi, the petitioner moved a Criminal Writ Petition No. 350 of 1993 in this court for quashing the complaint which was decided on 20-10-1993. In the return filed by respondent No. 1 in that case it was stated that an order of detention had also been passed against the petitioner and since he was absconding the same was sent to Home Secretary, Chandigarh for his service. Thereupon brother of the petitioner namely Jaspal Singh contacted the petitioner who was residing in Toronto (Canada) on telephone about the detention order and he instructed his brother to file the present writ petition.

4. The petitioner averred that on the same grounds the orders for detention of Virsa Singh, Nirmal Singh and Sat Pal Singh were passed by the same authority and Virsa Singh, Nirmal Singh etc. filed Criminal Writ Petitions Nos. 165, 166 and 167 of 1988 in the High Court of Delhi which were heard by a Division Bench of that court and on 2-8-1988 all the detention orders were quashed against Virsa Singh and others, on the ground that statement of Multan Singh was relied upon by the detaining authority but he had retracted his confession and that statement retracting his confession was not placed, before the detaining authority. The non placing and non-consideration of that statement of Multan Singh by the detaining authority vitiated the detention orders passed against Virsa Singh and others. The grounds of detention in the case of the petitioner

were the same and retraction statement made by Multan Singh was not placed before the detaining authority in his case also. It was further alleged that the detention order Annexure P1 was passed against the petitioner for preventing him from abetting the smuggling of goods but in the grounds of detention, Annexure P1/A, it was nowhere stated as to how he abetted the smuggling of goods. Whether he intentionally aided by any act or illegal omission the other persons to smuggle gold. The detention order was passed for extraneous reason i.e. not to allow him to come to India and meet his relatives and manage his property in his native State i.e. Punjab. When the detention order is passed for extraneous reasons on irrelevant grounds then that order is bad and the court could quash the same at the pre-execution stage especially when it smacked of mala fide and had lost its efficacy and the purpose for which it was passed. The detention order was passed on 29-1-1988 and had not been executed so far i.e. after a lapse of about six years. The execution of the detention order at this belated stage would be punitive and not preventive.

5. In the return filed by respondent No. 1 a preliminary objection was raised regarding the jurisdiction of this court. It was contended that the proceedings under the COFEPOSA were taken against the petitioner at Delhi and Virsa Singh, Nirmal Singh etc. the co-accused, approached Delhi High Court for quashing the detention orders passed against them. So, this had no jurisdiction and the detention order should have been assailed in the High Court at Delhi. This fact was not denied that Multan Singh had retracted his confessional statement and the same was not considered by the detaining authority but it was alleged that as the petitioner was yet to be detained, the question, of non-consideration of any document did not arise at this stage. It was further asserted that as the petitioner was absconding, detention order could not be executed and the same was sent to the Home Secretary, Punjab for execution. The delay in execution of the order was absconding of the petitioner and his stay abroad. Satisfaction of the detaining authority was genuine and germane to the purpose of the Act. Order of detention was passed against the petitioner on the basis of his involvement in the smuggling of gold into India.

6. I have heard the learned counsel for the parties and have perused the record.

7. The learned counsel for the respondent contended that the truck containing gold biscuits was searched in Delhi and the proceedings took place there, the co-accused of the petitioner moved the High Court at Delhi for quashing the detention orders passed against them so this court has no jurisdiction to entertain the petition. This contention of the learned counsel is without any basis. The truck in question was seized at Kundli which is admittedly a place in Haryana. Although it was later on taken to Delhi, that will not mean that cause of action if any arose at that place. Moreover, the petitioner is a resident of 32 Golden Avenue, Amritsar. The detention order was also sent to the Home Secretary, Punjab for serving it on the petitioner at his Amritsar address. In these circumstances, the present petition under Article 226 of the Constitution of

India for quashing the impugned order was rightly filed in this court. When the truck was seized in Haryana and the detention order is to be served on the petitioner at Amritsar it cannot be said that no cause of action arose to the petitioner within the jurisdiction of this Court and the contention of the learned counsel for the respondent does not hold good.

8. The learned counsel for the respondent further contended that although the detention order was passed on 21-1-1988 yet the petitioner had been avoiding arrest and he approached this Court before surrendering himself to the authorities, in pursuance to the detention order. He was not entitled to get the order quashed at pre-execution stage. In support of his contention he placed reliance on the observations of their Lordships of Supreme Court in the Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, . This contention of the learned counsel is however, without merit as when there is a threatened violation of right it would not be proper course for the court to tell the petitioner that the court cannot take any action towards preventive justice until his right is actually violated and it was only thereafter that he could file a petition for a Writ of Habeas Corpus. The judgment relied by the learned counsel referred above does not lay a complete bar on the power of this court to entertain a petition at pre-execution stage and to grant a relief in a proper case. It was observed therein as under:-

It is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz. where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed (ii) that it is sought to be executed against a wrong person. (iii) that it is passed for a wrong purpose (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so.

9. It was further held that the courts have power to interfere with the detention order even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. A detenu can claim exercise of power of the court and that discretion has to be exercised judicially on well settled principles. In the case of Navin Kumar Kapur v. Administrator 1989 (3) Del 345 : 1990 Cri LJ 79) it was held that even before a detention order is executed the detention order could be challenged and the court had power to examine the legality of the detention order. Similarly in Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, , a detention order was challenged before arrest on the ground that it was not a legal order. The court observed that validity of the order could be examined before the same was executed. The case of the petitioner thus can be examined in the light of the guidelines laid down by

their Lordships of the Supreme Court.

10. The main contention of the learned counsel for the petitioner was that the detention order passed against, the co-accused of the petitioner i.e. Virsa Singh, Nirmal Singh and Satpal Singh on the basis of the same grounds of detention were already quashed by a Division Bench of Delhi High Court in the case of Virsa Singh v. Union of India 1988(1) DL 190. So the order passed against the petitioner was liable to be quashed in order to maintain consistency. It was urged that in fact there were specific allegations against Virsa Singh and others while nothing was brought against the petitioner to suggest that he intentionally instigated any of his co-accused to do something illegal or aided by any act or illegal omission to smuggle gold, for the subjective satisfaction of the detaining authority. In the grounds of detention Annexure P.1/A a reference was made to the statements of Virsa Singh, Nirmal Singh, Satpal Singh and Multan Singh. This fact was within the knowledge of the detaining authority that Virsa Singh, Nirmal Singh, Satpal Singh filed retraction letters before A.C. M.M. New Delhi on 8-1-1988 but it was never brought to the notice of the detaining authority that Multan Singh had also retracted his confession and on this ground alone the detention orders passed against Virsa and others were quashed.

11. In the case of Virsa Singh (supra) this fact was admitted that Multan Singh's statement u/s 108 of the Customs Act was placed before the Detaining Authority and it was mentioned in the grounds of detention but the statement vide which he retracted his confession was not brought to the notice of the detaining authority and on this ground the detention order was held to be bad and was set aside. In the instant case also it is admitted that statement of Multan Singh recorded u/s 108 of the Customs Act was placed before the detaining authority but the fact of retraction of confession was not brought to the notice of the detaining authority, so it was not borne in mind while passing the detention order. In fact the detaining authority was not alive to the fact that Multan Singh had retracted his confession at the time the impugned order was passed. Multan Singh had retracted his confessional statement by moving an application from jail. Thus, when the statement retracting confessional statement was not within the knowledge of the detaining authority, the detention order stands vitiated as it will be a case of clear non-application of mind to the vital aspect of the matter which if considered may have influenced the mind of the detaining authority one way or the other. As the detention orders of Virsa Singh and others were set aside on this ground, the impugned order cannot be upheld.

12. It was lastly argued on behalf of the petitioner that the detention order passed against the petitioner was for preventing him from abetting the smuggling of goods but in the grounds of detention it was nowhere stated as to how he had abetted the smuggling of goods and the ingredients of abetment as defined in Section 107 of the Indian Penal Code were not fulfilled. Before the detaining authority statements of Virsa Singh, Nirmal Singh, Satpal Singh co-accused of the petitioners and Multan Singh were placed but none of them said

anything as to how the petitioner was responsible for abetting them in smuggling gold from abroad. They even did not state that the recovered gold biscuits were arranged or sent by the petitioner from abroad. In support of his contention the learned counsel placed reliance on Swaran Singh v. State of Punjab 1989 (2) RCR 595. In this case also an order of detention was passed on the ground of abetting smuggling of gold but no mention was made in the grounds of detention as what active suggestion or support or stimulation was given by the detenu to the persons instigated who smuggled the gold. It was held that order of detention was not valid for non-application of mind. In the instant case also in the grounds of detention ingredients of offence of abetment as defined in Section 107 of the Indian Penal Code are lacking which were essential to sustain the charge of abetment against the petitioner. The detaining authority having not adverted to this aspect of the matter, the order of detention cannot be said to have been passed by due application of mind and the order is liable to be quashed on this ground also.

13. For the reasons recorded above, I allow this petition and quash the detention order dated 21-1-1988 Annexure P1 as well as grounds of detention Annexure P.1 /A.