

**(1993) 12 P&H CK 0056**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Amended Criminal Writ Petition No. 117 of 1993

Kuldip Singh

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision :** 13-12-1993

**Acts Referred:**

**Citation :** (1994) 1 RCR(Criminal) 667

**Hon'ble Judges :** A.P.Chowdhri, J

**Advocate :** H.L. Sibal, Reeta Kohli, D.S. Sharma, Advocates for appearing Parties

## **Judgement**

A.P. Chowdhri, J.

1. This is a petition under Article 226 of the Constitution of India for quashing the detention order issued against the petitioner.

2. Brief facts of the case are that the petitioner arrived at Indira Gandhi Airport, New Delhi, from Dubai, on June 6, 1992. He collected his checked in baggage and started leaving by the green channel. He was intercepted near the exit gate and directed to get the baggage Xrayed. He was found carrying 24 carat gold concealed in various ways. The total quantity being carried by him was 500 grams valued at Rs. 1,43,500/ according to international prices and Rs. 2,57,500/ according to the prices of India. A complaint under the relevant provisions of law dated July 2, 1992, Annexure P1 was instituted against the petitioner, which is pending in the Court of the Additional Chief Metropolitan Magistrate, New Delhi. The petitioner was allowed bail by the said Court vide order Annexure P3 dated June 29, 1992. It appears that the Administrator, National Capital, Territory of Delhi issued an order of detention dated January 12, 1993 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The order could not be served upon the petitioner, who has filed the aforesaid writ petition seeking quashing of the order.

3. In response to notice, a reply has been filed on affidavit by Shri M.U Sadhqui, Deputy Secretary (Home) to the Government of National Capital Territory of

Delhi. Two preliminary objections have been taken. The first one is regarding territorial jurisdiction of this Court. The objection is based on the ground that the petitioner is a permanent resident of Delhi and no part of the cause of action took place outside Delhi and, therefore, only the High Court at Delhi had territorial jurisdiction. The second preliminary objection is that in view of the law laid down by the Supreme Court, the order of detention can be assailed at the preexecution stage only on limited grounds and no such ground having been made out in the present petition, the same was liable to be dismissed. On merits, it has been stated that even one incident is enough to sustain a valid detention order, depending on the facts and circumstances of the case. It has also been stated that the petitioner made four trips abroad during a short duration without any apparent explanation and his method of concealing the gold when the same was recovered on June 6, 1992, at the Indira Gandhi International Airport indicated his propensity and inclination to indulge in smuggling. It was further stated that grounds of detention can be served only on the detenu and his relations were not entitled to be given a copy thereof.

4. Under clause (2) of Article 226 of the Constitution, the powers conferred on the High Court by that Article can be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power. In the facts of the present case, the petitioner has averred that he permanently belongs to Ludhiana and the police tried to apprehend him at his house in order to serve the order of detention there. There is no specific denial of the fact that the petitioner is a permanent resident of Ludhiana. That being so, this court has territorial jurisdiction in dealing with this writ petition.

5. In *Additional Secretary to Government of India, 1991(1) Recent Criminal Reports 549 : JT 1991(1) 549 (SC)*. Two questions arose for consideration. These were :

(i) Whether the detenu or any one on his behalf is entitled to challenge the detention order without the detenu submitting or surrendering to it, and if so, in what type of cases ? and

(ii) Whether the detenu or the petitioner on his behalf is entitled to the detention order and the grounds on which the detention order is made before the detenu submits to the order of detention ?

6. The first question was answered by their Lordship of the Supreme Court by saying that the Courts have power to interfere even before the detention order is served or the detention is effectuated, but that such power will be exercised sparingly and in exceptional cases of the type enunciated therein, The Court observed :

"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 preexecution stage are necessarily very limited in scope and members, 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 the wrong person. (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds of (v) that the authority which passed it had no authority to do so...."

It was reiterated in *N.K. Bapna v. Union of India and others*, 1992(3) Recent Criminal Reports 613 (SC) : JT 1992(4) SC 49 that it is now well settled that even in a case of preventive detention. It is not necessary for the proposed detenu to wait till the detention order is served upon him before challenging the detention order.

7. On the second question, the Apex Court firmly answered the question the negative. As the present petition has been filed before the service of the order of detention and the grounds of detention on the detenu, all that is required to be seen is whether the petitioner's case falls in any of the five types of cases mentioned by their Lordships in *Smt. Alka Subhash Gadia's case* (supra) Mr. H.L. Sibal, Senior Advocate, did not make any serious effort to show that the present case was averred in one or more of the above category of cases. On the other hand, all that was argued was that the present detention order appeared to be based on a single incident. At the same time, Mr. Sibal conceded that depending on the facts and circumstances of a given case, even a single incident could support a valid detention order. The facts and circumstances are not available in the instant case on account of the fact that grounds of detention have still not been furnished to the detenu and under law the detaining authority is not required to disclose the grounds of detention to the detenu or any one else on his behalf. It was also sought to be contended that there was a time lag between the order of bail, namely, June 29, 1992, and the actual order of detention which is stated to be dated January 12, 1993. In the absence of ground of detention, it does not appear possible to conclude that there was a time gap especially when even the date of the order of detention is not known to the petitioner and the detaining authority has also not chosen to place the detention order and the grounds of detention on record. Apart from the fact that the present case is not of any of the types envisaged by their Lordships in the aforesaid decision in *Smt. Alka Subhash Gadia*, it was repeatedly emphasized in the said judgment by their Lordships that it was justified in entertaining a writ petition before the detention order had been served on the detenu. Keeping in view the above facts and circumstances and the settled law, no case has been made out for interference with the order of detention at this stage. The petition is, therefore, bound to fail.

8. As a consequence of the above, the detention order, unless withdrawn by the detaining authority, is likely to be served on the petitioner. It is made clear that it will be open to the petitioner not challenge his detention after service of the

grounds of detention on him, and it goes without saying that the dismissal of the present writ petition will not stand in the way of such a challenge. The present petition fails and the same is accordingly dismissed.