
(1993) 07 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 171 of 1993

Kuldip Singh @ Kalia.

APPELLANT

Vs

Secretary to Government Punjab .

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Citation : (1993) 3 AICLR 697 : (1994) 1 RCR(Criminal) 79

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

Advocate : Mehtab Singh, A.S. Sandhu, Advocates for appearing Parties

Judgement

G. S. Chahal, J.

1. Kuldip Singh by means of this petition under Article 226 of the Constitution of India seeks quashing of detention order No. 1/29/933HIII (COFEPOSA)/359 dated March 15, 1993 (Annexure P1) and grounds of detention dated 1531993 (Annexure P 1 /A).

2. The allegations in which the detention of the petitioner had been ordered, may be drawn from the grounds of detention Annexure PI/A.

3. On Jan 11, 1992, working on a specific information, the Customs (Preventive Staff), Amritsar held a Nakabandi on Jalandhar road near Beas and intercepted a Car No. DIB 3385 Ambassador of steel grey colour. The petitioner and Sarabjit Singh were found travelling by the car. After their particulars were confirmed, it was inquired from them if the car was carrying any contraband. While Sarabjit Singh replied very courageously in the negative, the petitioner got confused while saying no. The customs staff then started thorough checking of the car. The petitioner then disclosed that there were Rs. 10,00,000 in Indian currency duly concealed about which Sarabjit did not have any knowledge. The car was then taken to customs house, Amritsar, where it was rummaged in the presence of the petitioner, his associate and two independent witnesses, Rs. 10,00,000/ currency notes were recovered duly concealed in specially designed cavity behind the rear seat of the car which had been fitted with two screws and covered with a rexin

sheet. These bundles were tied with plastic tapes and rubber bands. The registration book of the car which stood registered in the name of Mrs Nisha Rani of Delhi was recovered from the dashboard. The petitioner and his associate could not produce any evidence documentary or otherwise showing lawful acquisition/possession/transportation of the Indian currency of the value of Rs. 10,00,000/ . The petitioner disclosed that he had sold 35 gold biscuits for a total price of Rs 17,50,000/ to one Vipam Kumar son of Jagdish Shah of Khuh Kaurian Amritsar, while a sum of Rs. 5,00,000/ had already been transported and delivered to Varinder Bhalla and his accomplice Tarvinder Singh, another sum of Rs. 2.40 lakhs to one Shahid of Turkman Gate, Delhi, and the remaining amount had been detained to meet expenses of marriages of relations and the same was with the knowledge of his counter part smugglers Since that contingency was over, the petitioner had been directed by Achha of Dubai to deliver this amount to Tarvinder Singh. As a follow up action. searches were carried out and from the residential premises of Varinder Bhalla, one bundle of 100 currency notes of the denomination of Rs. 50/ and a slip containing some telephone Nos. of Dubai based smuggler Maninder Singh were recovered. As a result of the search of the residential premises of Tarvinder Singh currency notes valued at Rs. 12 97,440/ were recovered. The petitioner thereafter tendered a voluntary statement in which he disclosed his activities of smuggling. The details of the same are given in para 3 of the grounds. On inquiry from Smt. Nisha, she informed the authorities ;that she had purchased the car which she subsequently sold to Kuldip Singh r/o 103, Ghanupur, Chhahrata, Amritsar. The petitioner was arrested on 1111992 after tendering the statement, and he was produced before CJM Amritsar who remanded him to judicial custody and subsequently, released him on bail on February 3, 1992

4. The petitioner has challenged the detention order on the grounds that there was inordinate delay in passing of detention order and that this fact vitiates the satisfaction of the detaining authority. That the detaining authority had considered the factum of release of the petitioner on bail, however while supplying the detention order, copies of the bail application and bail order has not been supplied and the same had deprived the petitioner of making an effective representation.

5. The respondents have contested the petition and in the return, beside, stating about the recovery of the currency notes of Rs. 10 lacs and same being the part of the sale proceeds of contraband gold, it was stated it took sufficient long time in the investigation of the case at various levels. The delay was tried to be explained on the following facts "The sponsoring authority sponsored the proposal on 21.7.1992 to the State Government for the detention of the petitioner which was received in the office of Answering respondent on 21.7.92 and the proposal was examined by the legal agency on 27.7.92. Some additional information was called from the sponsoring authority vide State Government letter dated 3071992 In the meanwhile the case was further examined and the original grounds of detention in Punjabi were prepared and the same were

translated into English. Number of copies of supporting material were typed which was quite a voluminous job and consumed sufficiently long time. The case was again examined on 24.9.1992 by the legal agency in the light of information from the sponsoring authority vide his letter dated 18.9.1992 received in the office of the Answering Respondent on 21.9.1992. Some more clarifications on the informations sent by the sponsoring authority were sought vide State Government letter dated 13.10.1992, which were received in the office of the respondent. I on 10.12.1992. Again some more clarifications were asked for from the sponsoring authority vide "State Government letter dated 28.12.1992. The case was examined on 3.2.1993 by the legal agency in the light of clarifications received from the sponsoring authority vide his letter dated 29.1.1993 which was received in the office of the Answering respondent on the same day. Ultimately the proposal for passing the detention order of the petitioner was, sent to the State Law Department on 4.2. 1993 where it remained under examination in the office of Answering Respondent and ultimately after consideration of the material on record, with due application of mind, the order of detention was passed by the competent authority on 12.3.1993 and the formal order was issued on 15.3.1993."

Detail was also given of the holidays which fell during the intervening period. With respect to the nonsupplying of the bail order and bail application, it was stated that they were the documents of the petitioner and it was not required to supply the same to him and the material on record was sufficient for making an effective representation.

6. The prejudicial activity complained of is dated Jan 11, 1992. The proposal for detention was sponsored for the first time on July 21, 1992 i.e. after a period of 6 1/2 months and thereafter it took more than 7 1/2 months to complete the formalities and pass the detention order.

7. In *Lakshman Khatik v. The State of West Bengal*, AIR 1974 SC 1264 the order of detention was held to be invalid where it had been passed after a lapse of about 8 months from the date of incidents. Dealing with the matter of delay, their Lordships made the following observations :

" Indeed mere delay in passing a detention order is not conclusive but we have to see the type of grounds and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. it is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentences for offence committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed and if the object was to prevent disruption of supplies of foodgrains one should be taken as soon as incidents like those which are referred to in the grounds have taken place. In our opinion, the order of detention is invalid."

8. In *Rabindra Kumar Ghosel v. The State of West Bengal* AIR, 1975 SC 1403 the detention order was set aside where there was unexplained delay of about 3 months.

9. In *SK Serajul v. State of West Bengal* AIR 1975 SC 1517 there was undue delay after the alleged incidents before order of detention was passed and again after the order of detention and before actual arrest of detainee Their Lordships held that the Court could doubt the genuineness of the alleged subjective satisfaction" of the detaining authority as to the necessity of detaining the detainee with a view to preventing him from acting in a manner prejudicial to maintenance (sic) to the community. In a Habeas Corpus Petition such delay must be satisfactorily explained in order to prove genuineness of the subjective satisfaction alleged by the detaining authority.

10. In *T.A. Abdul Rahman v. State of Kerala*, 1989(2) Recent CR 459 their Lordships of the Supreme Court held that when there is time lag of 11 months between the prejudicial activities and the order of detention the test as to whether the detention should be quashed, on the ground of delay is not a rigid or mechanical test by merely counting the number of months, the Court should examine, whether the Detaining Authority has satisfactorily explained the delay of 3 months in the arrest causes doubt on genuineness of the subjective satisfaction of the Detaining Authority leading to an inference that detaining authority was not really and genuinely satisfied as regards the necessity of I detaining the detainee.

11. I accept the argument of the learned counsel that the respondent has not satisfactorily explained the reasons for delay in passing the detention order. This delay will. cause a doubt on. the genuineness of the subjective satisfaction of the detaining authority. Applying the principles contained in the above quoted authorities the order of detention is illegal.

12. The second ground taken by the petitioner is the fact that the matter of grant of bail to him was considered by the detaining authority, but no copies of the bail application and the bail order were supplied to him and, thus, he had been deprived of his right to make a satisfactory representation. The plea of the respondent that these were the documents of the petitioner himself and there was no need to supply the same has no force.

13. In *M. Ahmadekutty v. Union of India*, 1990(1) RCR 423 , their Lordships made the following observations :

"Considering the fact in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered for the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those sought to have formed part of the documents supplied to the detene with the grounds of and without them the grounds themselves, could

not be said to have been complete. We have, therefore, no alternative but to hold that it amounted denial of the detenue's right to make an effective representation and that it resulted in violation of Article 22 (5) of the Constitution of India rendering the continued detention of detenue illegal and entitling the detenue to be set at liberty in this case.

The view was reaffirmed in PU Abdul Rahiman v. Union of India and ors., 1991(1) RCR 589.

14. Applying that principles to the facts of the present case, the nonsupply of the copies of bail application and bail order make the detention order illegal.

15. I hereby accept the petition, quash the detention order Annexure P1 and grounds of detention Annexure PI/A. The petitioner shall be released forthwith if not required in any other case.

16. This petition stands disposed of.