
(1988) 06 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Criminal Writ No. 1079 of 1988

Kulwant Singh

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 30-06-1988

Acts Referred:

Citation : (1989) 1 RCR(Criminal) 229

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : S.K. Bhatia, Sukhbir Singh, H.S. Mattewal, Advocates for appearing Parties

Judgement

Jai Singh Sekhon, J.

1. The petitioner is being detained under the order of detention, dated December 1, 1987, passed by the Distt. Magistrate, Amritsar, under the provisions of Section 3(2) read with sections 3(3) and 14A of the National Security Act, 1980 (hereinafter called the `Act"), which runs as under :

"Whereas I Sarbjit Singh, IAS, District Magistrate, Amritsar, am satisfied in respect of Sh. Kulwant Singh son of Buta Singh aged about 26/27 years resident of village Bath P.S. Sadar Tarn Taran, Distt. Amritsar, at present in custody in Central Jail Amritsar and that with a view to preventing him from acting in a manner prejudicial to the security of State and maintenance of the public order and interference with efforts of Govt. in coping with the terrorist and disruptive activities, it is necessary to detain him.

2. Now, therefore, in exercise of the powers conferred upon me by section 3(2) read with sections 3(3) and 14A of National Security Act, 1980, as amended up to date, I Sarabjit Singh, IAS District Magistrate, Amritsar, hereby order directing that the said Kulwant Singh son of Buta Singh be arrested and detained in Central Jail, Amritsar, where he is presently lodged in Judicial custody in the cases registered against him.

3. That this order has been passed by me being conscious of the fact that

Kulwant Singh is already in judicial custody in the cases registered against him. Kulwant Singh is taking steps to get himself released from the custody and there is every likelihood of his being set at liberty and in that event he is likely to indulge in prejudicial activities in view of his prima facie propensity towards such activities and thus there is compelling necessity to pass the detention order against him though he is in judicial custody at present.

4. I further direct that Sh. Kulwant Singh be informed that he has a right to make representation in writing against the order under which he has been detained and if he wishes to make representation he may address it to the State Government through the Superintendent of Jail and if he wishes to make a representation to the Central Govt., he may address the same to the Secretary, Govt. of India, Ministry of Home Affairs, Deptt. of Internal Security, New Delhi, through the Superintendent of Jail as soon as possible. His case will be submitted to the Advisory Board within the stipulated period from the date of his detention."

The above referred detention order was passed allegedly on the following grounds :.

"1. That, on 28/8/1987 the information was received by Sh. Kishan Gopal, S. H. O. Police Station Sardar Tarn Taran that the suspects have access in the Behak of your father Buta Singh situated in the area of village Bath. Thereafter the police party headed by S. 1. Kishan Gopal, S.H. O. Police Station Sadar Tarn Taran went to the said Behak, Joginder Kaur wife of Pula Singh who was standing outside the gate on seeing the police party raised alarm about the arrival of the police. Buta Singh and Mehal Singh who is son-in-law of Buta Singh and 2/3 other persons grappled with the police party and resisted their entry in the Behak. At the time, you along with other 5/6 persons were taking meals in the Behak (room) then you asked your companions as to for what they were waiting ? and asked them to shoot them. Thereafter, two persons amongst them, who were armed with sten guns opened fire at the police party which hit Kishan Gopal who was leading the police party. Kishan Gopal fell down at the spot and died. The police party in self defence also fired. The assailants and members of the house fled away from the spot. You also have taken away the service revolver of Kishan Gopal. Case FIR No. 123 date 28/8/87 under sections 302 307/148/149 IPC, 3/4 of TD Act, 25 of Arms Act was registered at Police Station Sadar Tarn Taran.

2. That on 20/8/1987 you were arrested in the above said case while you in the company of Sukhjit Singh s/o Buta Singh r/o village Bath, Mehal Singh s/o Surta Singh r/o Saran Singh Police Station Sirhali and Joginder Kaur wife of Buta Singh r/o village Bath were present at a bridge in the area of village Bath. At the time you all were raising slogans "Bhindranwale Tiger Force Zindabad, Khalistan Zindabad." The Hindus living in Punjab would be murdered and the remaining would be kicked out, a separate Khalistan would be established and you all would not live under the Indian Flag, neither the orders of the present Govt. would be obeyed.

3. After your arrest you were were interrogated by A.S.I. Jit Singh and you admitted your links with extremists and also having provided shelter and other facilities to the extremists. You further admitted that on 28887 Swaran Singh s/o Chanan Singh Rai Sikh r/o Aladinpur, Rajinder Singh @ Nikku s/o Kuldeep Singh r/o Adda Nurdi Tarn Taran had stayed with you in your Behak You further admitted that both these persons fired at Kishan Gopal S.I. at your instigation. You further admitted having assembled at the bridge and also having raised slogans above referred on 2091987. You further, admitted that you had taken away the service revolver from S.H.O. Kishan Gopal which was handed over to Swaranjit Singh."

2. Being aggrieved against the said order of detention, the petitioner has invoked the extraordinary jurisdiction of this Court by filing the writ petition under article 226 of the Constitution of India. for quashing the above referred impugned order of detention, besides its confirmation by the State Government later on, mainly on the ground that he being in custody since 20.8.1987 for the offences under section 302/307/148/149 IPC read with section 3/4 T. D. Act and section 25 of the Arms Act, there was no possibility of the petitioner being released on bail; and the detention order is uncalled for. It was further alleged that the detention order was passed in a mechanical manner and without application of mind on the part of the detaining authority as the grounds on which the authority had concluded about the immediate release of the detenu on bail, are not mentioned in the detention order or in the grounds of detention. It was further maintained that there was no compelling reasons to pass the detention order as the alleged activities of the petitioner relate to one incident only. Various other grounds were also taken.

3. In the return filed by the State in the form of affidavits of Shri V.V. Chadha, Under Secretary to Government Punjab, Home Department as well as by the District Magistrate, Amritsar, the above referred contentions of the petitioner were refuted. It was asserted that there was every likelihood of the petitioner being released on bail in the above referred murder case and that his past conduct and association with the terrorists clearly made out a case of his future propensity regarding indulgence in similar activities later on. Copy of the report of the Senior Superintendent of Police, Amritsar, was also filed in support of the factum that there was hope of the immediate release of the detenu from jail on bail.

4. I have heard Mr. H.S. Mattewal, Senior Advocate, for the petitioner and Dr. (Mrs.) S.K. Bhatia, learned Assistant Advocate General, Punjab, for the State, besides perusing the records.

5. There is a considerable force in the contention of the learned counsel for the petitioner that there was no possibility of immediate release of the petitioner on bail and that the detaining authority had wrongly so inferred without application of mind, as the perusal of the detention order, as well as the grounds of detention, besides the replies filed by the District Magistrate, Amritsar; and Shri V.V. Chadha, Under Secretary to Govt. Punjab Home Department, Chandigarh; as

well as the report of the Senior Superintendent of Police. Amritsar. does not reveal that the detenu had even moved an application for bail in the above referred case registered against him for the offence under sections 302/307/148/149 IPC etc. It is noteworthy that in a case registered under the Terrorist and Disruptive Activities (Prevention) Act, 1985. there is very little scope for bail and that too in those cases where, even if, all the allegations of the prosecution are taken to be true, no case is made out against the accused. Under these circumstances, the contention of the petitioner in his petition that there is no possibility of his being released on bail in the above referred case, appears to be well founded. Similar controversy came under the scrutiny of the Supreme Court in Binod Singh v. District Magistrate, Dhanbad, Bihar and others, AIR 1986 Supreme Court 2090. Their Lordships of the Supreme Court after elaborating this question held as under :

"Where the order of detention under section 3(2) of the National Security Act was served upon the detenu, when he was already in jail in respect of the murder case and there was no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order of detention, the continued detention of the detenu under the Act would not be justified. 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. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. And if that is the position, then however disreputable the antecedents of a person might have been, without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody."

In Binod Singh's case (supra) the Supreme Court had relied upon its earlier view in Ramesh Yadav v. District Magistrate, Etah and others, AIR 1996 Supreme Court 315 to the following effect :

"Whether the order of detention was passed because the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area, the same was not proper. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail, an order of detention under the Act should not ordinarily be passed."

In view of the above referred situation, there is no option but to hold that the order of detention was passed in a mechanical manner and without application of mind by the authority regarding the imminent possibility of the detenu being

released on bail in the above referred to case.

6. However, there is no force in the contention of the learned counsel for the petitioner that the above referred single act of the petitioner killing a police officer i.e. S. 1. Kishan Gopal, is not sufficient to judge the future propensity of the petitioner to indulge in such an act as the allegations against him are that he used to give shelter to the terrorists and was an active member of the extremists group headed by Avtar Singh Brahma.

7. For the foregoing reasons, the above referred order of the detention, as well as the order of the State Government approving the detention of the petitioner is hereby quashed by accepting this writ petition. However, it is clarified that the concerned authority shall be at liberty to pass such an order of detention under the Act, if actually the petitioner secures the order of bail from the concerned Court in the above. referred murder case. The. petitioner being already in custody there is no necessity of ordering his release forthwith.