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**(1960) 12 P&H CK 0002**  
**In the Punjab And Haryana At Chandigarh**

Master Tara Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

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**Date of Decision :** 05-12-1960

**Acts Referred:**

Constitution of India, 1950 — Article 19, 226

**Citation :** (1961) CriLJ 547

**Hon'ble Judges :** R.P. Khosla, J

**Bench :** Single Bench

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## Judgement

R.P. Khosla, J.—This petition under Article 226 of the Constitution of India while questioning the detention of Master Tara Singh, President of Shiromani Akali Dal, who was arrested and detained under the Preventive Detention Act (Act No. IV of 1950) on 24th May, 1960 in pursuance of the order of the Governor of Punjab State, seeks issuance of a writ in the nature of habeas corpus. The impugned detention order reads:

Whereas the Governor of Punjab is satisfied in respect of Master Tara Singh, President Shiromani Akali Dal, now residing in Sikh Missionary College, Amritsar, that with a view to preventing him from acting in a manner prejudicial to the maintenance of Public order it is necessary to detain him; Now, therefore, in exercise of the powers conferred, by Section 3(1)(a)(ii) of the Preventive Detention Act, 1950 Act No. IV of 1950 the Governor of Punjab hereby orders directing that the said Master Tara Singh shall be arrested and detained.

The grounds for detention supplied to the detenu were:

In pursuance of the provisions of sub-section, (1) of Section 7 of the Preventive Detention Act, 1950 you, Master Tara Singh, President, Shiromani Akali Dal, now residing in Sikh Missionary College at Amritsar, are hereby informed that the ground for your detention u/s 3(1)(a)(ii) of the said Act are as under:

1. That you, Master Tara Singh, President Shiromani Akali Dal,

(a) after your success in the last Shiromani Gurdwara Parbandhak Committee elections, which you had contested, inter alia, on the issue of Punjabi Suba, have become desperate and as a result thereof you have embarked upon a vigorous, alarming, provocative and malicious propaganda, through private and public meetings and diwans, initiating agitation for the formation of Punjabi Suba and you have thus created and are creating Communal tension and explosive situation prejudicial to the maintenance of public order in the Punjab State.

(b) Being inspired by the recent disturbances in Nagpur for the formation of Vidarbha you are intensifying your propaganda by leading a Shahidi Jatha from Amritsar on the martyrdom day of Guru Arjan Dev on 29-5-1960 and reaching Delhi for taking out a procession there on 12-6-1960 after visiting en route historic Gurdwaras and other places, preparing Sikh masses to take to agitational programme which is likely to create chaos in the State with the result that the general masses and Sikhs in particular may take law in their own hands and even set Government buildings on fire or damage railway tracks.

(c) Believing that you would be put under arrest before the march of Shahidi Jatha to Delhi on 29-5-1960, you have nominated your successors to steer the agitation and to flare up the masses, and have started inciting the members of Bir Khalsa Dal to immediately equip themselves in use of lathis and firearms and take to violent programme as soon as they found the morcha on Punjabi Suba issue to be fizzling out.

(d) The situation has been so surcharged and is being further charged by your continued provocative and inciting Propaganda that Hindu communal organizations are girding up their doing to oppose tooth and nail your demand for Punjabi Suba which is likely to disturb the peace and maintenance of public order in the State of Punjab" Sub-paragraphing (a), (b), (c) and (d) as above had been suggested by, and adopted at the instance of the learned Advocate-General.

2. The instances and particulars in support of the said grounds for detention were in the following terms:

(i) Addressing an Akali conference attended by nearly 14000/15000 Persons at Anandpur Sahib, District Hoshiarpur, on the occasion of Hola Mohalla Fair on 13-3-1960, from 10 a.m. to 7 p.m. you said that the only solution of all the problems was the formation of Punjabi Suba and those opposed to your demand were rather communalists. You further declared that they would come to their senses and would accept everything (eh sab kuchh manan ge sirf enan da damagh katechar ho gaya hai) but they had become accustomed to see some strength and they would accept through "Mukabla" Dilating on that point you further added that you wanted to avoid "takkar" but they did not feel ashamed and were bent upon bringing about chaos and that in case chaos came and took a serious turn then Partap Singh Koiron would not be able to control it, and Pakistan was awaiting to avail such state of affairs. You further declared that the

attainment of Punjabi Suba was your crusade because you wanted it to safeguard Dharma and that making preparations for waging a war in Gurdwaras was also protection of "Dharma" (Gurdwarian wich beh ke jang di tayari karni wee dharma dee rakhyo hai). You further asserted that you would not beg for Punjabi Suba, but would attain it through your own might and further predicted, addressing the khalsa, that "Ghumsan" was sure to come, but did not know its form and time when it would come;

(ii) Addressing an Akali diwan of about 1000 persons in Gurdwara at Zira, District Ferozepore, on 20-3-1960 from 1 p.m. to 4-30 p.m. you announced that all the enemies including Bhartiya. Jan Sang, Arya Samaj, Communists, Hindu Maha Sabha, etc. had jointly attacked the Panth and that they tried to dodge the Sikhs, but the Khalsa proved very sane. You further disclosed that Dr. Gopi Chand Bhargava had declared that Punjabi Suba could only be carved out on his corpse and that you desired his ambition to be fulfilled. You further announced that you wanted Punjabi Suba.

(iii) Addressing a public meeting-cum-reli-gious-diwan held under the auspices of Shiromani Akali Dal sponsored by Bir Khalsa Dal in connection with its annual two-day conference in Gurdwara Guru Tegh Bahadur, Ludhiana, on 23-4-1969 from 10 a.m. to 11.30 a.m. you stated that dangerous and troublesome times were coming and there were certain people who boasted that Punjabi Suba could only be formed on their dead bodies and you also affirmed that Punjabi Suba would surely be formed may it be on lakhs of their dead bodies and that Shiromani Akali Dal had taken a decision to make full preparations to combat this challenge. You further announced that you were going to Delhi to decide that issue and that the harvesting season would be shortly over and the programme of Punjabi Suba would be started in the very near future.

(iv) It is reliably learnt through a secret source that you disclosed during private talk on 29-4-1960 that Sikh masses would take the agitational programme in their own hand and that since the Programme would be left to the Sikh masses they might set Government buildings on fire or damage the railway tracks.

(Note : More facts or details regarding the place, time or other information are not being disclosed as their disclosure is against the public interest, vide Sub-section (2) of Section 7 of the Preventive Detention Act, 1950

(v) In Working Committee meeting of Shiro-mani Akali Dal attended by about 20 or 25 persons held at Shiromani Akali Dal Office, Amritsar, on 30-4-1960, under your presidentship, you announced your desire to achieve Punjabi Suba in your lifetime and declared that you would not hesitate to make any sacrifice for its achievement. In that meeting it was decided to hold a convention of all the parties on 22-5-1960 at Amritsar to decide the shape of agitation and to thrash the problem of launching a strong agitation for the purpose. It was further decided to hold a meeting of Shiromani Akali Dal Executive Committee on 21-5-1960 to chalk out the detailed Programme of the morcha and to plan the

programme of the first jatha that would leave on 29-5-1960 and that the jatha would consist of five members from each district and you asked the District representatives to submit their panel of names for your approval.

(vi) In a meeting attended by about 20 or 25 Presidents of various District Akali Jathas held at Amritsar on 10-5-1960 under your Presidentship, you disclosed that a Sikh Convention had been called at Amritsar on 22-5-1960 to which leaders supporting the creation of Vishal Haryana, Vishal Himachal and Maha Delhi had been invited and called upon the participants to make that convention a success. You also directed them to arrange rousing receptions for the Shahidi Jatha which would leave Amritsar on 29th May, 1960, as and when it passed through their respective areas and further desired that diwans and Public meetings should also be organized wherever possible. You directed that jathedars to bring about a complete herbal by the Sikhs in the Punjab State on Punjabi Suba Day on 8-6-1960 and suggested that all supplies of food grains, fodder and milk from rural areas to the cities should be suspended and that the Sikh School-going children should also abstain from attending their classes. Referring to the procession to be taken out at Delhi on 12-6-1960, you emphasised the need for making it a grand show as by that you wanted to show the mass Sikh support behind the Punjabi Suba demand.

(vii) It is reliably learnt through a secret source that during a private talk on 11-5-1960, you disclosed that you had received information that the Government was going to arrest you even before the Shahidi Jatha started on its march to Delhi on 29-5-1960 and nominated your successors to steer the agitation. You further gave out that the Bir Khalsa Dal should not wait till there was violence from the opposite camp but should take the lead and start the violent programme when they found that the morcha was fizzling out and further remarked that the Bir Khalsa Dal should be given full training in the use of lathis and firearms so that they might not have to Cut a sorry figure at the eleventh hour.

Note: More facts or details regarding the place, time or other information are not being disclosed as their disclosure is considered to be against the public interest (vide Sub-section (2) of Section 7 of the Preventive Detention Act, 1950).

3. The contentions that have been Put forward by Mr. Chari who appeared in support of the petition may be classified. Under the following heads;

(i) That the detenu was engaged in peaceful organisational measures pertaining to the linguistic demand for Punjabi Suba, the demand was neither communal or religious. In any event, since it was peaceful and did not involve any violence, direct or veiled, and was in the exercise of fundamental rights of freedom of speech and movement, it was not repugnant, warranting detention;

(ii) that majority of the grounds served on the detenu were either vague or irrelevant, the detention therefore was bad;

(iii) that the detention was mala fide and motivated by ulterior object.

The burden of Mr. Chari's submissions was that the detention was unwarranted interference in the exercise of fundamental right of carrying on a peaceful agitation and that the dominant aim of the detaining authority was the dislike of the agitation and by circumventing the Ordinary process of law recourse had been taken to the Detention Act to keep behind the bars the detenu, the leader of the agitation, whose activities were not to the liking of the opposite party and were in fact to their annoyance. It was prominently urged that the grounds and instances served on the detenu except ground No. (c) and instance No. 7 had no connection with the disturbance of public Order. According to the learned counsel, the real grievance of the Punjab State was that the peaceable activities of the detenu would result in other communal organisations being roused to violent action.

The activities of the detenu per se were claimed to have been not objectionable and it was contended that the remote consequences which might result in deterioration of communal atmosphere and the supervening communal bodies taking the law in hand, were hardly grounds to justify detention of Master Tara Singh. Mr. Chari contended that the demand for Punjabi Suba was not communal, but was based on the constitutional provisions seeking to carve out linguistics States and was part of the demand for national self-determination. It was also urged that even if such a demand was communal, it should not have resulted in his client's detention as long as there was no incitement to violence.

4. Mr. Chari dealing with the grounds of detention seriatim stated that initiating agitation for the formation of Punjabi Suba if Peaceably carried could not result in deterioration of public order. The statement that the same would result in communal tension and explosive situation prejudicial to the maintenance of public order in the Punjab State was far too remote,

5. As regards the seven instances supporting the grounds of detention Mr. Chari submitted that addressing the Akali Conference on the occasion of Hola Mohalla Fair on 13th March 1960, and the detenu urging that the listeners should resolutely press the demand for Punjabi Suba and that the "attainment of Punjabi Suba was your crusade as it safeguarded Dharam and that you would obtain the Punjabi Suba through your own might" and predicting that it may result in "Ghumsan" was not preaching violence. The comment of the learned counsel relating to the second instance regarding meeting addressed by the detenu in an Akali Diwan in Gurdwara at Zira, District Ferozepore on 20th March, 1960, with the theme that Bhartiya Jan Sangh, Arya Samaj, Communists, Hindu Maha Sabha etc., were enemies of the Panth and that Dr. Gopi Chand Bhargava's declaration that Punjabi Suba could only be carved out on his corpse which ambition the detenu prayed be fulfilled, had not the slightest relation or proximity to preaching violence resulting in an upheaval, communal or otherwise, affecting the public tranquillity or order. Comments as to instance No. 3 relating to an address by the detenu at a public meeting-cum religious Diwan held under

the auspices of Shiromani Akali Dal sponsored by Bir Khalsa Dal in connection with its annual two days conference in Gurdwara Guru Tegh Bahadur, Ludhiana, on 23rd of April, 1960, and the detenu referring and postulating that dangerous and troublous times were ahead and that the people who boasted that Punjabi Suba could only be formed on their dead bodies and that it was inevitably to be formed, again was maintained to have no element of violence.

Instance No. 4 contemplating that the agitational programme relating to Punjabi Suba getting in the hands of Sikh masses might result in setting Government buildings on fire or damage to the railway tracks was stated to. have no causal connection with the grounds of detention. As regards instance No. 5 relating to the deliberations of working committee meeting of Shiromani Akali Dal held at Shiromani Akali Dal Office at Amritsar on 30th April, 1960, under the Presidentship of the detenu and his announcing and desiring achievement of Punjab Suba in his lifetime and declaring that the members attending should not hesitate to make any sacrifice for the goal and urging them to chalk out a detailed programme of morchabandi and other activities connected, was maintained to have been peaceful planning and pressing of the Punjabi Suba demand.

Instance No. 6 connected with the meeting held under the Presidentship of the detenu and attended by about 20 or 25 Presidents of various District Akali Jathas held at Amritsar and the detenu disclosing that a Sikh Convention had been called at Amritsar on 22nd May, 1960, to which leaders supporting Vishal Haryana, Vishal Himachal and Maha Delhi had been invited and calling upon the participants to make that convention a success and his urging the attending-participants to arrange rousing reception for the Shahidi Jatha which would leave Amritsar on 29th May, 1960, as and when it passed through their respective areas and further desiring that Diwans and public meetings should be organised wherever possible and directing the Jathedars to bring about a complete hartal by Sikhs in the Punjab State on the Punjabi Suba day (8th June 1960) and suggesting that all supplies of foodgrain, fodder and milk from rural areas to the cities be suspended and desiring the Sikh school-going children to abstain from attending their classes and urging them to make the procession to be taken out at Delhi on 12th. June, 1960, a real success, according to the learned counsel did not smell of any violence whatever and were termed to have been part of the agitational peaceful programme of the Punjabi Suba demand in the exercise of constitutional rights of free movement and speech.

Instance No. 7 was frankly conceded to have been objectionable, for it exhorted the followers and listeners to violence. It was, however, urged that if of the several grounds and instances some were not germane to the validity of the detention and have been taken into consideration, the detention order must be struck down.

6. Mr. Chari, learned counsel for the detenu, reiterating emphasised that the petitioner's detention was an unwarranted interference of the exercise of the

fundamental rights guaranteed under the Constitution and that the action resulting in the impugned detention was a mere cloak to negative those rights. It was submitted by the learned counsel that the Punjabi Suba of detenu's conception was within the Indian Union and his agitation, in the present and past, had demonstrated that they were Peaceful and non-violent. Proceeding Mr. Chari maintained that there was not even an allegation much less proof that the so-called agitational activities of the detenu had resulted in the followers having committed any act of violence whatever. Not one of the words ill the grounds or particulars furnished, according to the learned counsel, was suggestive of disturbance of public order.

The dominant aim of the detaining authority was said to have been the dislike for the claim and agitation for the demand of Punjabi Suba and the detention of the leader had been Precipitated not rationally but in panic. Mr. Chari stated that the object of detention envisaged, e.g. disturbance of public order, must flow from the activities complained of. There must be proximate, rational causal connection and the detention should not be directed for the objects ulterior or reasons foreign. It was vehemently urged that except for the part of grounds exhorting the Akali Dal to arm and prepare for the worst and perhaps instance No. (vii) there was no nexus between the activities complained of and the object postulated. Relying on *Shibban Lal Saksena Vs. The State of Utter Pradesh and Others*, and *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, the learned counsel maintained that even if one of the grounds was vague or irrelevant the detenu was entitled to his release and liberty, in the instant case nearly all the grounds and instances were suggested to suffer from the said defect and the detention was claimed to be invalid.

7. It is necessary to set nut at this stage some of the admittedly settled legal propositions that pertain to detention under the Preventive Detention Act:

(i) The propriety of the detention order is the subjective satisfaction of the detaining authority and cannot be questioned in Court of law. Satisfaction of the detaining authority is to be based on the grounds supplied, supported by instances and particulars;

(ii) what is justiciable is whether said grounds land particulars probatively had a proximate causal connection with the object of the detention;

(iii) to sustain order of detention the grounds and each of them have not only to be relevant, but they must not also be vague;

(iv) if the said satisfaction is well-based as alluded (sic. alleged) then the order can only be (challenged on grounds of mala fide.

8. It would be noticeable that the prime object of the instance impugned detention was to safeguard the public order. It might also be stated that the control is preventive and not Punitive. Object is not to lock up the detenu and punish him for something done, but to intercept him before he does it and to

prevent him from doing it. In the language of Lord Macmillan in *Liversidge v. Anderson* 1942 AC 208

The question is one of preventive detention justified by reasonable probability, not a criminal conviction which can only be justified by legal evidence.

The considerations thus that the agitational programme was linguistic or communal are not directly in point. What requires determination is whether the activities complained of probative could result in danger to public order. It is, therefore, equally unnecessary to look for whether in fact the said activities subsequent to detention led to violence deteriorating the public order or tranquility: what is in view is whether they tend so to do.

9. It was contended on behalf of the State that right of freedom of speech or movement or any right under Article 19 of the Constitution was exercisable only if the same had not been curtailed or obviated pursuant to some lawful order. If, therefore, the detention was lawful under the Preventive Act rights at speech or movement under Article 19 ceased.

10. The contention seems to receive support from the observations made by their Lordships of the Supreme Court in *A.K. Gopalan Vs. The State of Madras, Das J.* as he then was, pointedly observed:

...The protection of Article 19 is conterminous with the legal capacity of a citizen to exercise the rights protected thereby, for Sub-clauses (a) to (e) and (g) of Article 19(1) postulate the freedom of person which alone can ensure the capacity to exercise the rights Protected by these sub-clauses. A citizen who loses the freedom of his person by being lawfully detained whether as a result of conviction for an offence or as a result of preventive detention loses his capacity to exercise those rights and therefore has none of those rights which Sub-clauses (a) to (e) and (g) may protect....

Article 19 rights end when the lawful detention begins.

11. Mr. Chari's contention that the demand for linguistic State was a legitimate constitutional demand for self determination, per se may or may not have merit, but if the activities of its exponent fell within the Mischief of the Preventive Detention Act and affected the public tranquillity or order, its defence could not be grounded on any inherent right provided for or arising under Article 19 of the Constitution. The validity or otherwise of the preventive detention obviously thus does not depend on and is not dealt with by Article 19. It has to be determined, on considerations primarily basic, germane to, and arising from the Preventive Detention Act (No. 4 of 1950) itself.

12. What calls for decision therefore is:

(i) Whether the grounds and particulars probatively were relevant to the object set out, namely, deterioration or disturbance of public order;

(ii) whether the grounds and the instances were vague;



(iii) if the detention order was not questionable for reasons under (i) and (ii) was it bad for its having been mala fide.

13. Reviewing the grounds and particulars the learned Advocate-General urged that the government of the charge was that the detenu had set upon achieving Punjabi Suba by certain means which in the satisfaction of the detaining authority was offending public order. The detenu visualised violence and if the demand was not coming through otherwise, the violent agitational Programme was to be organised and forced through. Ground (a) together with instances (i), (ii) and (iii) were maintained to goad the co-religionists to carry on an alarming propaganda. Ground (b) read along with instances (iv), (v) and (vi) according to the learned counsel postulated and anticipated that measure will get out of hand. Ground (c) and instance No. (vii) was suggested clearly to preach violence. Ground (d) together with instances (i), (ii) and (iii) tended to be provocative and incite other communal organisations to violence.

14. There is a good deal of substance in the contentions raised by the learned Advocate-General on behalf of the State.

15. Instance No. (i) is full of war cries. The opponents of the Punjabi Suba demand were dubbed as communalists who were said to be accustomed to come to their senses only through "Mukabla." and show of force. To secure the demand for Punjabi Suba, efforts were termed as a crusade for safeguarding Dharma and making of preparations in Gurdwaras for waging war were justified and preached. The attainment of the demand was asserted to be feasible through "might" only. The instance also envisaged "Ghumsan", warfare and chaos.

16. In instance (ii) the detenu talked of his opponents Jan Sang, Hindu Maha Sabha, Arya Samaj etc.

17. Instance (iii) while visualising the advent of troublous time and asserting that the Shiromani Akali Dal was making full preparations and was ready to meet all eventualities, extolled the might of the Khalsa to combat all opposition.

18. Ground (a) read with instances (i), (ii) and (iii) inevitably leads to the conclusion that there was danger to public order and cannot be held as irrelevant.

19. Instance (iv) postulated Sikh masses taking the agitation programme in their own hand and resultingly setting on fire the Government buildings or perpetrating other damage to the railways.

20. Instance (v) again through the garb of organizational measure is exhorting the Sikhs to make all sacrifice and attain the Punjabi Suba demand come what may.

21. Instance (vi) is urging the Sikhs to strike work, stop supplies of essential commodities like foodgrains, fodder and milk from rural areas to the cities, as if war had been proclaimed on the urban populations (manned largely by other communities). It was nothing else, but preaching "blockade measures" which

necessarily would tend to deteriorate public order equated as it is with public peace and tranquillity.

22. Ground (b) read with instances (iv), (v) and (vi) must accordingly be held relevant to the object of detention.

23. As regards ground (c) read with instance (vii), there can hardly be any doubt that steering of the agitation was contemplated by flaring up the Sikh masses and urging the members of Bir Khalsa Dal to equip themselves with firearms and use of lathis to carry out the programme of violent activities necessitated in the event of the morchabandi failing. This ground admittedly stated to have preached violence and was not assailed and indeed could not have been

24. Lastly ground (d) read with instances (i), (ii) and (iii) clearly showed that they were provocative of the other communal organizations through envisaging a warfare carried on in the name of crusade for attainment of Punjabi Suba in the garb of protection of Dharma. It necessarily would endanger public order.

25. Some of the grounds and instances are stated to be innocent. For determining relevance of any one ground the grounds of detention must be regarded and read as a whole. The dictum in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, . *Naresh Chandra Ganguli Vs. The State of West Bengal and Others*, support the proposition.

26. The plan reading of the grounds and particulars supplied clearly show that none of the grounds is irrelevant. In any event if they are read as a whole, the statements calling upon persons to build up strong movement for Punjabi Suba demand and rousing communal passions that it must be attained at all costs and not refraining from even preaching violence cannot be said to" be wholly unconnected with the maintenance of public order.

27. Even if it was possible to hold the open violence was not advocated or disseminated it is a notorious fact that when communal feelings are exploited and communal frenzy is worked up, violence invariably results sooner or later. It is significant that the detenu who is the President of Shiromaul Akali Dal, a communal body, delivered almost all his orations in question in Gurdwaras and that too to his co-religionists,

28. As regards vagueness, the learned counsel for the detenu did not succeed in making out an effective challenge. The test as that respects was Laid by the Supreme Court in *Naresh Chandra Ganguli Vs. The State of West Bengal and Others*, It was observed by Sinha J, as he then was:

If the statement of facts provided is capable of being clearly understood and is sufficiently definite to enable the detained Person to make his representation it cannot be said that it is vague.

29. Applying the test to the grounds and particulars furnished to the detenu in the instant case, it is hardly possible to hold that any one of the grounds Or

instances suffered from vagueness. It is clear that the place, date and purpose of the planned objectionable activities had all been stated as clearly as could be expected.

30. For another reason too, they cannot be held vague. The statement of grounds and particulars do not seem to have handicapped the detenu in making proper representation, for despite two appearances before the Advisory Board, the detenu made no application for supply of any further particulars,

31. It remains now to decide whether the impugned order of detention was mala fide and thus bad. It is well-known that the detenu can always establish, that the order was made in abuse of the powers and thus mala fide, and that he was entitled to his liberty and release. The onus of proof in this respect, however, is on the detenu and the burden is indeed a heavy one. In the instance ease, except for bare assertions, there is nothing on the record to support the contention raised. Mere allegations, even suspicion that the grounds are mala fide is not enough to impair the order of detention. On this ground too, the order of detention cannot be assailed.

32. In these premises, I am unable to accede to this petition, which must therefore stand dismissed.