

(1989) 03 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 160 of 1989

Mehal Singh @ Ghulla

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-03-1989

Acts Referred:

Citation : (1989) 1 AICLR 1180 : (1989) 1 CurLJ 699 : (1989) 2 RCR(Criminal) 52

Hon'ble Judges : S.S.Grewal, J

Advocate : S.K. Bhatia, A.S. Sandhu, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Article 226 of the Constitution of India, relates to quashment of the order of detention passed by the District Magistrate, Amritsar on April 12, 1988 (Annexure P1). Facts relevant for the disposal of this petition are, that the petitioner was arrested on March 7, 1988 in connection with First Information Report No. 11 dated March 9, 1988 registered at Police Station Ramdas, District Amritsar and while in judicial custody he was served with the impugned detention order. It was further pleaded that impugned order of detention (Annexure P1) was illegal, vague, arbitrary and was liable to be quashed as the same was passed only on basis of a First Information Report which has been registered against some unknown person and that the satisfaction of the Authority passing the said order was not real and genuine and the same was mechanical. It was also alleged that the detention was illegal for noncompliance of the provisions of Section 3(5) of the National Security Act, 1980 (hereinafter referred to as the Act).

2. This petition has been opposed on behalf of the respondents on the ground that the detention order is legal, valid, proper and the same is based on the following two first information reports :

(i) FIR No. 156 dated 12.12.1987, under Section 25 Arms Act, Police Station `A"

Division, Amritsar.

(ii) FIR No. 11 dated 9.3.1988, under Section 216A of the Indian Penal Code, Sections 3/4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the Act), Section 25/54/59 Arms Act and Section 3 of the Official Secrets Act, Police Station Ramdas, District Amritsar.

It was also pleaded that the Detaining Authority was conscious of the fact that the petitioner is in custody in the aforesaid criminal cases and at the time of passing the order of detention, the Detaining Authority arrived at his subjective satisfaction, after due application of mind on the material placed before him by the sponsoring authority, and, the satisfaction was genuine and not mechanical.

3. Counsel for the parties were heard. It was mainly contended on behalf of the petitioner that it was virtually impossible for him to be released on bail in the aforesaid criminal cases, in view of the fact that these cases had also been registered for commission of offences punishable under the T.D.A. Act. Reference in this respect has been made to the stringent provisions of Section 20(8) of the T.D.A. Act, wherein, additional limitations have been laid on the powers of the Court to grant bail to the accused of offences punishable under the T.D.A. Act. Careful perusal of the said provision indicates that no bail can be granted in such offences unless :

(a) the Public Prosecutor has been given opportunity to oppose the application for such release, and

(b) where the Public Protector opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is likely while to commit any offence on bail.

It is quite obvious that the chances for grant of bail for commission of offences under the T.D.A. Act are quite remote, until and unless the Public Prosecutor, appearing on behalf of the State does not oppose, grant of bail in such cases. Thus, there does not seem to be any reasonable basis to hold that there is any likelihood of the petitioner being set at liberty in the aforesaid criminal cases. Since the detenu would remain in custody, there would be hardly any chance for him to interfere with the efforts of the Government in coping with the terrorist and disruptive activities or other alleged prejudicial activities. It is also pertinent to note that in the instant case apart from the registration of two first information reports against the petitioner, no material has been brought on record to show that the detenu, if released on bail, was likely to commit activities prejudicial to the maintenance of the public order or security of the State or that there were compelling reasons to justify his preventive detention in spite of the fact that the detenu is under detention on a charge of criminal offence, nor the prejudicial activities mentioned in the impugned detention order have any reference either to the offence under the Official Secrets Act or that the same was likely to affect the security of the State. In these circumstances, the impugned order of detention passed under Section 3(2) read with Section 3(3)

and 14A of the National Security Act, 1980, was not at all justified and cannot be legally sustained.

4. I am fortified in my view by the authoritative pronouncement of the Supreme Court in case Smt. Shashi Aggarwal v. State of U.P. and others, 1988(1) Recent Criminal Reports 579 : AIR 1988 Supreme Court 596 , wherein following its earlier authority in case Binod Singh v. District Magistrate, Dhanbad, Bihar and others, AIR 1986 Supreme Court 2090, it was held as under :

"Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by claiming an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. Where detention order was passed against the detenu, who was already in jail, merely on the ground that the detenu was trying to come out on bail and there was enough possibility of his being bailed out and there was no material on record to show that the detenu if released on bail, was likely to commit activities prejudicial to the maintenance of public order, the order of detention would be illegal."

I am further supported in my view by the authority in case Vijay Kumar v. Union of India and others, 1988(1) Recent Criminal Reports 602 : AIR 1988 Supreme Court 934 , wherein reviewing its earlier decisions on this point their Lordships held as follows :

"When a detenu is already under detention for an offence, whether bailable or nonbailable, the Detaining Authority will take into his consideration the fact of detention of the detenu and, as laid down in Sashi Aggarwal's case (supra), there must be compelling reasons to justify his preventive detention in spite of the fact that he is already under detention on a charge of a criminal offence. There must be material for such compelling reasons and the material, or, compelling reasons must appear from the grounds of detention that will be communicated to the detenu. In other words, two facts must namely, (1) awareness of the detaining authority of the fact that the detenu is already in detention and (2) there must be compelling reasons justifying such detention despite the fact that the detenu is already under detention."

For the foregoing reasons, the impugned order of detention (Annexure P1) cannot be legally sustained. The same is hereby set aside. The petitioner is directed to be set at liberty forthwith concerning his detention under Section 3(2) read with Section 3(3) and 14A of the National Security Act.