
(1991) 02 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 2180 of 1990

Mukhtiar Singh

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Citation : (1991) 3 RCR(Criminal) 49

Hon'ble Judges : S.D.Bajaj, J

Advocate : P.L. Sood, S.C. Mohunta, Atul Lakhanpal, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. Along with five other petitioners Mukhtiar Singh is also arrayed as an accused in case First Information Report No. 260 dated 4th June. 1990 of Police Station Fatehabad under sections 302, 323, 148, 1491452 of the Indian Penal Code and sections 25/27 of the Arms Act. On 10th August, 1990 the petitioner was remanded to jail custody till 31st August, 1990.

2. On 31st August, 1990 the petitioner was not produced in court. Learned Sub Divisional Judicial Magistrate, Fatehabad, issued production warrants to jail authorities for 10th September, 1990 and then again for 28th September, 1990. On 20th September, 1990 detenu petitioner Mukhtiar Singh filed in this Court Civil Writ Petition No. 2180 of 1990 for the issuance. of a writ of habeas corpus for obtaining his release from illegal detention on the grounds that during the period 31st August, 1990 to 28th September, 1990 he was being detained inside Central Jail, Hissar, without the issuance of any remand order, remanding him to judicial custody, by a Criminal Court of competent jurisdiction.

3. In reply filed by the Superintendent, Central Jail, Hissar, on 5th December, 1990 it was conceded that detention of the petitioner inside Central Jail, Hissar, from 31st August, 1990 to 16th October, 1990 was without any order remanding him to judicial custody and that the petitioner could not be produced in Court in

deference to production warrants on 31st August, 1990, 10th September, 1991 and 28th September, 1990 due to nonavailability of police escort because the police was otherwise busy with law and order duties connected with antireservation agitation.

4. I have heard Shri Atul Lakhanpal, Advocate, for the petitioner, Mr. S.C. Mohunta, A.G. Hry. with Mr. L.P. Sood, D.A. for the State and have carefully gone through the material on record.

5. In the course of their respective arguments learned counsel for both the parties have referred me to the observations made in *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27; *Ram Narain Singh v. The State of Delhi and others*, AIR 1953 SC 277, *Rustom Cavasjee Cooper v. Union of India*, AIR 1976 SC 564; *A. Lakshmanrao v Judicial Magistrate, First Class, Parvatipuram and others*, AIR 1971 SC 186 : *Col. Dr. B. Ramachandra Rao v. The State of Orissa and others*. AIR 1971 SC 2197 : *Gauri Shankar Jha v. State of Bihar and others*, AIR 1972 SC 711, *Kanu Sanyal v. District Magistrate, Darjeeling and others*, AIR 1974 SC 510, *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579; *Khatri and others v. State of Bihar and others*, AIR 1981 SC 928 and *Mahesh Chand and etc, v. State of Rajasthan and etc.*, 1985 Criminal law Journal 301 in support of their arguments. A cumulative reading of the observations made in all the authorities aforesaid leads to the irresistible conclusion that detention of a person in custody after the expiry of remand order, without any fresh order of remind committing him to further custody while adjourning the case under section 344 (Old) 309 (new) of the Code of Criminal Procedure is illegal. The controversy regarding period of time, with reference where to the legality or otherwise of the detention is to be looked into, has also been set at rest with the observations that the court would look into it with reference to the date of initiation of proceedings. The proceedings in this case were initiated on 20th September, 1990 when the petitioner was still being detained inside Central Jail, Hissar without any valid order of remand which had not been extended by the criminal court of competent jurisdiction beyond 31st August, 1990.

6. In line with the ratio of the authorities aforesaid it has been held by this Court in *Madhu Limaye v. The State*, AIR 1959 Punjab 506 and *Surjit Singh v. The State of Punjab and another*, 1988(1) Chandigarh Law Reporter 94 that it is well settled that no person can be detained in jail except in accordance with an order of detention passed against him by the competent court. In the absence of any such order the Jail Superintendent must of necessity be directed to release the petitioner forthwith. Mere direction that the case may come up on 31st August, 1990, 10th September, 1990 and 28th September. 1990 is not proper compliance of section 344 (old) 30) (new) of the Code of Criminal Procedure and if there is, as is apparent, no legal order remanding the accused to jail custody, the detention obviously is rendered illegal.

7. Learned Advocate General appearing for the State of Haryana had no real answer to he absence of a valid remand order for the relevant period but

asserted that on the date of return viz December 5, 1990, detenu was in proper legal custody and, therefore, could not challenge his detention in habeas corpus jurisdiction. The submission is wholly untenable. In point of time the question has to be settled whether during the period 31st August, 1990 to 16th October, 1990 the detention of the petitioner by the jail authorities was legal or not. This Court as already observed, has consistently held that no person can be detained in jail except in terms of the order of detention passed against him by a criminal court of competent jurisdiction. The desired order in the case of the petitioner having admittedly not been obtained from the criminal court of competent jurisdiction at Fatehabad for the period 31st August, 1990, to 16th October 1990, the detention of the petitioner in Central Jail, Hissar, is obviously rendered illegal and the Jail Superintendent has of necessity to be directed to release the petitioner forthwith. JUDGMENT accordingly.

8. It is, however, made clear that the order aforesaid would not affect or prejudice the rights of the prosecuting agency to get the petitioner rearrested through court process for facing the trial of criminal case admittedly pending against him. Petitioner would also in that event be entitled to seek the concession of his release on bail. The petitioner may also, if he is so advised, seek the remedies available to him in respect of his illegal detention aforesaid from civil and criminal forums of appropriate jurisdiction.

JUDGMENT accordingly.