

(1988) 01 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1655 of 1987

Paramjit Singh alias Pammi

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 15-01-1988

Acts Referred:

Citation : (1988) 1 CurLJ 215 : (1988) 1 RCR(Criminal) 512

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

Advocate : H.S. Bhullar, S.S. Kang, Advocates for appearing Parties

Judgement

S.S. Sodhi, J.

1. The challenge here is to the order of the District Magistrate, Faridkot of April 1, 1987 under the subsections (2) and (3) of section 3 of the National Security Act, 1980 (hereinafter called 'the Act').

2. The impugned order of detention was passed and served upon the petitioner when he was already in custody in respect of two cases having been registered against him.

3. To give the relevant facts here, a case under Section 25 of the Arms Act was registered against the petitioner on May 17, 1985. The petitioner applied for and was granted bail on September 13, 1985. While on bail he was absent from court on January 3, 1986 on which date the bail granted to him was cancelled, but he was subsequently again granted bail on March 7, 1986.

4. Later, on September 15, 1986, another case was registered against the petitioner. This time under Section 25 of the Arms Act and Sections 3 and 4 of the Terrorists and Disruptive Activities (Prevention) Act, 1985. In this case, the petitioner was granted bail by the competent court on January 23, 1987, but the petitioner did not avail of this order and continues to be in jail. The impugned order of detention, annexure P1 of April 1, 1987, was thus passed when he was still in custody.

5. A reading of the order of detention and the grounds of detention, annexure P2 would show that while there is mention there of both the cases registered against the petitioners, the fact that he had been granted bail is conspicuous by its absence. It is apparent, therefore that this aspect of the matter was neither considered nor adverted to by the detaining authority while passing the impugned order of detention. This is what now constitutes the foundation of the infirmity imputed to the order of detention. Relied upon in this behalf being the judgment of the Supreme Court in *Anant Sakharam Raut v. State of Maharashtra and another*, 1988(1) R.C.R.(Criminal) 619 : AIR 1987 Supreme Court 137. The detention order in this case was based upon three incidents of three different dates. The offences involved in the three cases being, under Section 324 and 336 of the Indian Penal Code, 324 and 506 of the Indian Penal Code and Section 452 of the Indian Penal Code. The detenu moved applications for bail in all these three matters and on three successive dates bail was granted to him in all these cases. There was no mention in the order of detention about the fact that the petitioner, who was an undertrial and had been arrested in connection with these cases, had been released on bail. It was held that this indicated a total absence of application of mind on the part of the detaining authority while passing the order of detention. In dealing with this matter, it was also observed that if the petitioner was found disturbing the law and order or misusing the bail granted to him, the authorities would be at liberty to move the appropriate court to get the bail orders cancelled.

6. Next to note is *Sita Ram Somani v. State of Rajasthan and others*, AIR 1986 Supreme Court 1072, which was a case of preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In this case too, an order of detention was passed against the detenu under the said Act, during his prosecution thereunder, for illegal possession of foreign gold and currency. The relevant documents relating to his retracted confession and the grant of bail were not placed before the detaining authority. This was held to vitiate the detention on the ground of nonapplication of mind by the detaining authority.

7. The omission thus on the part of the detaining authority to note and consider that the detenu had applied for and been granted bail in the two cases registered against him, clearly denotes that the detaining authority had not applied its mind to this very important aspect of the matter and this default renders the order of detention unsustainable.

8. In this view of the matter, the other ground of challenge, namely there being no nexus between the past conduct and the order of detention need not be gone into.

9. The impugned order of detention is accordingly hereby quashed, and this petition is thus accepted.