
(1972) 06 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Criminal Original No. 47-M of 1972

Pritam Singh alias Laddo

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 06-06-1972

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3(1)(a)(ii)

Citation : (1972) 06 P&H CK 0004

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : B.S. Bindra, for the Appellant; I.S. Tiwana, for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—This order will dispose of Criminal Original No. 47-M of 1972 (Pritam Singh v. State of Punjab and others) and Criminal Original No. 48-M of 1972 (Sujit Singh v. State of Punjab and others), as the facts of both the cases are similar and the points of law involved are also indetical.

2. Pritam Singh, petitioner, is a resident of village Bilaspur, Police Station Nihal Singh Wala, District Ferozepur. His detention u/s 3(2) read with section 3(1) (a) (ii) of the Maintenance of Internal Security Act, 1971 (hereinafter called the Act), was ordered by the District Magistrate, Ferozepur, with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. This order was passed on October 31, 1971, and was served on the petitioner on November 1, 1971, along with the grounds of detention by Darshan Singh, Inspector of Police. The petitioner made a representation on November 10, 1971, which was received in the office of the Home Secretary to Government, Punjab, Chandigarh, on November 15, 1971, and was sent to the District Magistrate, Ferozepur, for his comments on November 18 1971. The District Magistrate despatched his comments on November 24, 1971, which were received by the Home Secretary the following day. The papers were then sent to the Deputy Inspector-General of Police, C.I.D., on the same day and were received back from his office by the

Home Secretary on November 30, 1971. The Home Secretary examined the report of the petitioner in the light of the comments received from the District Magistrate on that very day and found it to be unsatisfactory. The file was then submitted to the Governor through the Advisor on December 1, 1971. The Governor agreed with the view expressed by the Home Secretary with the result that the representation of the petitioner was rejected. The rejection was, however, not conveyed to the petitioner.

3. The order of petitioner's detention dated October 31, 1971, issued by the District Magistrate was approved by the State Government on November 9, 1971, that is, within the statutory period of 12 days and the approval was conveyed to the District Magistrate by office memorandum dated November 9, 1971, for further necessary action. The District Magistrate communicated that order to the petitioner through the Deputy Superintendent of Jail.

4. The State Government forwarded the papers in connection with the detention of the petitioner to the Advisory Board on November 12, 1971. The papers sent were the order of detention passed by the District Magistrate, Ferozepur, dated October 31, 1971, the order of approval passed by the State Government on November 9, 1971, the grounds of detention and the report of the District Magistrate, Ferozepur, under sub-section (3) of section 3 of the Act. The representation of the petitioner dated November 10, 1971, referred to above, was, however, forwarded to the Advisory Board on December 3, 1971. The Advisory Board examined the case of the petitioner on December 16, 1971, and after giving personal hearing to the petitioner, upheld his detention. The Advisory Board sent its report to the State Government on December 17, 1971, and the Governor passed the necessary order confirming the order of detention of the petitioner for a period of 12 months from the date of his detention u/s 12(1) of the Act on December 29, 1971, agreeing with the report of the Advisory Board. That order was despatched to the District Magistrate, Ferozepur on January 3, 1972, with a direction to serve one copy of the same on the petitioner. A copy of that order was delivered to the petitioner in jail and thus the order of detention was confirmed and conveyed to the petitioner within the statutory period of three months.

5. The first point argued by the learned counsel for the petitioner is that the petitioner does not know English and knows only Punjabi. The order of detention and the grounds of detention served on him were in English which he could not understand and for this reason could not make any effective representation against his detention. In October/ November, 1971, the State language was Punjabi in Gurmukhi script. But the District Magistrate thought fit to draw up the grounds of detention in English and served the same on the petitioner, it is stated in the affidavit of the District Magistrate that Darshan Singh, Inspector of Police, duly read over and explained the grounds of detention to the petitioner in Punjabi. But no affidavit of Darshan Singh has been filed on the point with the return. The learned counsel for the State has also not produced the report of

Darshan Singh with regard to the service of the order and the grounds of detention on the petitioner to show that he had explained the same to the petitioner in his own language. The learned counsel had the record of the case with him at the time of the hearing of this petition but no document was available thereon to show that Darshan Singh had read out and explained in Punjabi the grounds of detention to the petitioner while serving the order of detention along with the grounds on him. The representation submitted by the petitioner is a very short one and it is nothing but denial simpliciter of the grounds which does not lead to the necessary conclusion that he understood those grounds and denied the same. In my opinion, the non-supply of the grounds of detention in Punjabi language, which he understood, materially prejudiced the petitioner in submitting his representation. He has expressly stated that he does not know English, as is clear from the fact that he signed his representation in Punjabi, although it is written in English. He has explained that he got the representation written by an official of the jail and signed it in Punjabi. In these circumstances, the argument of the learned counsel for the respondents that the petitioner understood the grounds of his detention as he did not make a grievance in his representation that he had not understood those grounds because of the fact that they were in English, loses all force. The detenu should not be driven to have the grounds read out and explained to him in his own language by some one in the jail; he should be enabled to read the grounds for himself and make a representation thereto in his own language because he can express himself better in that language than getting the reply prepared from some one else in a language which he does not know or understand. If the grounds of detention had been supplied to the petitioner in Punjabi, he would certainly have replied to them in more details in his own language. It was particularly necessary in this case to supply the grounds of detention to the petitioner in the Punjabi language because the State language at that time was Punjabi in Gurmukhi script and has continued to be so since April, 1968. No reason whatever has been stated by the District Magistrate as to why he served the grounds of detention on the petitioner in English and not in the State language, that is, Punjabi in Gurmukhi script. The petitioner is not debarred from raising this objection in this petition simply because he did not urge it in his representation. While confirming the order of detention of the petitioner, the Home Secretary and the Governor should have given thought to this matter in view of the mandatory provisions of Article 22(5) of the Constitution of India, which reads as under:--

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

6. This Article confers a fundamental right, to be safeguarded by the Courts, on the detenu of the grounds of detention being communicated to him to enable him

to make a prompt representation against the order of his detention. This fundamental right has been violated in the present case because there is no communication of the grounds of detention to the petitioner. Communication of the grounds of detention in a language which the detenu does not understand is no communication. As I have said above, the detenu cannot be made to seek the assistance of some other person to make him understand the grounds of his detention to enable him to make a representation. He must be given the grounds in the language that he understands, so that after giving thought to it for sometime at his leisure, he may, if he so likes, make a representation there against. In the present case, it has been pleaded by the respondents that Darshan Singh explained the grounds of detention to the petitioner in the Punjabi language, but there is no affidavit sworn by him on the point filed with the return. The oral explanation in Punjabi language of the grounds of detention which are in English does not amount to sufficient compliance with the provisions of Article 22(5) of the Constitution. Either the grounds of detention should have been drawn up in the Punjabi language or the translation in Punjabi of the grounds of detention, which were in English, should have been supplied to the petitioner. It has been held by their Lordships of the Supreme Court in *Harikisan Vs. The State of Maharashtra and Others*, in paragraphs 7 and 8 of the report, as under:--

7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that "he has studied upto 7th Hindi Standard which is equivalent to 3rd English Standard. The High Court negatived the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds contained in many paragraphs as indicated above in order to be able effectively to make his representation against the order of detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detenu, it means communication in the official language, which continues to be English; Secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the order of detention and the grounds, would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil

the requirements of the law. As has been explained by this Court in the case of *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, , clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the order should also be afforded to him. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must therefore mean imparting to the detenu sufficient knowledge of all the grounds on which the order of detention is based. In this case the grounds are several and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the order of detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.

In that case, it was emphasised by the learned Attorney General that English was the language of the State and, therefore, the supply of grounds of detention in that language was sufficient, which plea was not accepted by their Lordships. But in the present case, that plea is not open to the respondents because the State Language at the time the grounds of detention were served on the petitioner was Punjabi language in Gurmukhi script and not English. That State language the petitioner knows and understands and it has not been explained why a departure was made by serving the grounds of detention in a language which was not the State language.

7. This matter again came up for consideration before their Lordships in *Hadibandhu Das Vs. District Magistrate and Another*, and it was observed in paragraph 6 of the report as under:--

Mere oral explanation of a complicated order of the nature made against the

appellant without supplying him the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

The same view was taken by Gopal Singh J. in Criminal Original No. 40-M of 1972 (*Gurmej Singh v. State of Punjab and others*), decided on April 12, 1972, and by P.S. Pattar J. in Criminal Original No. 46-M of 1972, (*Baljit Singh v. The State of Punjab and others*) decided on May 1, 1972. It is thus apparent that by now it is well settled by judicial precedents that the grounds of detention must be served on the detenu in the language and script which he understands and knows and not in the foreign language like English which is not even the State language. The detention of the petitioner is, therefore, illegal on this short ground.

8. It has also been urged by the learned counsel for the petitioner that the detention of the petitioner is illegal because the decision of the Government with regard to his representation was not conveyed to him. I do not find any substance in this submission because there is no provision of the Act which obliges the Government to communicate the order of rejection of a detenu's representation to him.

9. It is then argued by the learned counsel for the petitioner that the provisions of section 10 of the Act were not complied with in this case in as much as the representation of the petitioner made on November 10, 1971, which had been admittedly received by the Home Secretary to Government Punjab on November 15, 1971, was not sent to the Advisory Board within 30 days of the date of detention and was sent two days later that is, on December 3, 1971, instead of December 1, 1971. It is submitted that the period of 30 days prescribed in section 10 of the Act is mandatory in character and has to be complied with. This section reads as under:--

Reference to Advisory Boards:--Save as otherwise expressly provided in this Act, in every case where a detention order has been made Under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it u/s 9 the grounds on which the order has been made and the representation, if any, made by the person, affected by the order, and in case where the order has been made by an officer, also the report by such officer under subsection (3) of section 3

10. It is apparent from the language of this section that if a representation is made by the detenu within 30 days of his detention, it has to be forwarded to the Advisory Board within that period. In the present case, this provision was not complied with and, therefore, the order continuing the detention of the petitioner is not legal. In view of the decision on these preliminary points, I do not consider it necessary to go into the last argument submitted by the learned counsel for the petitioner that some of the grounds supplied to the petitioner were vague

rendering the order of detention illegal.

11. For the reasons given above this petition is accepted and the detention of the petitioner is held to be illegal. He should be set at liberty forthwith unless he is wanted in some other case.

12. The facts of Surjit Singh's case are similar even with regard to most of the dates and for the reasons given above, his petition is also accepted and his detention is held to be illegal. He should be set at liberty forthwith Unless he is wanted in some other case.