
(1990) 04 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1026 of 1989

S. Sarwan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-04-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1), 7(1)
Constitution of India, 1950 — Article 22(5), 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482, 82, 83
Foreign Exchange Regulation Act, 1973 — Section 40

Citation : (1991) CriLJ 112

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

Bench : Single Bench

Advocate : Maninder Singh, for the Appellant; Jaishree Anand, for the Respondent

Final Decision : Allowed

Judgement

S.S. Grewal, J.—This petition under Articles 226-227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) relates to quashment of detention order No. F.No. 673/88/Cus.-VIII dated 11-10-1988, Annexure P/3, against the petitioner passed by Joint Secretary to Government of India, Ministry of Finance, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the "COFEPOSA" Act).

2. In brief facts relevant for the disposal of this petition, are, that on 19-7-1988 the officers of the Enforcement Directorate searched the residential premises of the petitioner at village Raipur Prola, District Jalandhar. As per allegations of the Enforcement Authorities, documents recovered from the house of the petitioner established the involvement of the petitioner in activities prejudicial to the augmentation and conservation of foreign exchange resources of the country. After service of notice u/s 40 of Foreign Exchange Regulation Act, 1973 the

petitioner accompanied the Enforcement Officers to their office at Jalandhar and there his statement was recorded. It was further alleged that the statement tendered by the petitioner was of voluntary nature and he has written the same in his own hand without any threat or pressure.

3. On the other hand, according to the allegations in the petition except for two passbooks, one diary and few paper sheets, nothing incriminating was recovered on the search of person, or, premises of the petitioner. It was further alleged that after the completion of the search the petitioner was taken to the office of the Enforcement Directorate and was subjected to beatings, torture, duress and coercion. He was forced to sign ? blank papers and a dictated involuntary statement incriminating the petitioner was obtained from him. The petitioner was also threatened by the Enforcement Officers that in case he does not sign the involuntary and incriminating statement and certain blank papers, then, the officers will see to it that an order of detention under COFEPOSA is passed against the petitioner. The petitioner was produced in the Court of Chief Judicial Magistrate, only on 21-7-1988 and was remanded to judicial custody. The petitioner was got medically examined on 21-7-1988 and was granted bail on 25-7-88 by the Chief Judicial Magistrate, Jalandhar, He made representation on 26-7-1988 to respondent No. 3, wherein, he retracted his involuntary incriminating statement and further requested for investigation of the false case against the petitioner. It was further alleged that the petitioner, who, is 66 years of age suffers from eye trouble, heart ailment and from various other diseases, had been staying at his residence from the date of search and illegal proceedings, and, in the third week of Feb. 1989, he came to know that a preventive detention order under COFEPOSA Act on the basis of a false case appeared to have been passed against him. The petitioner then made representation on 23-2-1989 to respondent No. 3 for reconsideration of his case and also prayed that order of detention passed, if any, be revoked. The petitioner did not receive any reply and thereafter he made another representation (Annexure P-2) to respondent No. 3. On the instructions of respondent No. 3, police force from Police-Station Sadar, Jalandhar, raided the petitioner's house on the morning of 6-4-1989 and asked the family members/ relatives of the petitioner who were present there, about the whereabouts of the petitioner and informed that they have come to arrest the petitioner, and, also showed them impugned order of detention. Those relations of the petitioner informed the police that he was out of station in connection with his treatment. The police forcibly took Harsharan Kaur petitioner's daughter-in-law, to police-station and kept her there throughout the day. On the request of village Panchayat she was allowed to leave the police-station. In stead her brother Sukhbir Singh was illegally detained, and, the police had threatened that Sukhbir Singh would not be allowed to leave the police-station till the petitioner is produced at police-station, in pursuance of the impugned order of detention (Annexure P-3).

4. In the return, filed by the respondents, most of the allegations made by the petitioner, have been specifically denied.

5. It was, however, admitted that search of the residential premises of the petitioner in his village, was conducted on 19-7-1988 by the Officers of the Enforcement Directorate and recovery of incriminating documents therefrom was effected which, established the involvement of the petitioner in activities prejudicial to the augmentation and conservation of foreign exchange resources of the country. It was next pleaded that after completion of the search, the petitioner was served with summons on 19-7-1988 u/s 40 of the Foreign Exchange Regulation Act, 1973; that he voluntarily accompanied the officers to their office at Jalandhar, and there he made a statement on 19-7-88 written by him in his own hand without any threat, or, pressure. It was further pleaded that no injury was found on the person of the petitioner from the copy of the medico legal report Annexure R-1. The petitioner was duly informed vide letter dated 10-1-1988 (Annexure R-2) that his representation made to the Directorate Authorities vide letter dated 26-7-88 was examined and found to be baseless; that apart from the voluntary statement of the petitioner, the documents seized from his residence, and, those of Kuldip Singh and Harbhajan Singh and the statement of the latter establish beyond doubt that the petitioner had been dealing in distribution of compensatory payments and he is a habitual offender. It was further pleaded that the petitioner enjoyed good health and immediately after the receipt of the detention order, several attempts were made to apprehend the petitioner, who, is absconding since October, 1988 and does not even attend the Court at Jalandhar and non-bailable warrants have been issued against him for his appearance. It was also asserted that the activities of the petitioner being prejudicial to the augmentation of the conservation of the foreign exchange resources of the country, his preventive detention was essential.

5A. In his re-joinder the petitioner denied the allegations made in the return filed by the respondents and, reiterated those in the petition.

6. Reply to the re-joinder was also filed on behalf of the respondents through Shri Kuldip Singh, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, in which it again pleaded that the petitioner has been continuously absconding since October, 1988 when the order of detention was issued; that he appeared in the Court of Chief Judicial Magistrate, Jalandhar only on 14-8-1989 and that repeated, attempts made by the Punjab Police and Enforcement Directorate to detain the petitioner were not successful.

7. Additional affidavit was also filed by present petitioner to controvert the allegations that he had absconded during the relevant period.

8. The learned counsel for the parties were heard.

9. On behalf of the petitioner it was submitted that in the impugned order of detention there is no specific reference to any alleged prejudicial activity on the part of the petitioner in the recent past and, as such there is no nexus or link between any such alleged prejudicial activity attributed to the petition which

could form any sound basis for passing impugned order of detention. Neither any criminal case, except in respect of recovery of some alleged documents from the premises of the petitioner, has been filed in any Court against the petitioner, nor, there is any reference in the impugned detention order that in case the petitioner is released he would indulge in such illegal activities.

10. Perusal of the detention order does not indicate any reference to establish the involvement of the petitioner in activities prejudicial to the augmentation and conservation of foreign exchange resources of the country. Neither any specific details find mention in the impugned order of detention, nor, other cogent or reliable material has been made available on behalf of the detaining authority to support the allegations against the petitioner, that, he has been dealing in distribution of compensatory payments to any particular individual, or, that he is an habitual offender in this regard. Besides no other material has been made available on behalf of the detaining authority which could possibly constitute any rational basis for the detaining authority to come to its subjective satisfaction before passing the impugned order of detention against the petitioner. Mere reference to seizure of certain documents from the residence of the petitioner as well as from the residential houses of S/Shri Kuldip Singh and Harbhajan Singh would not fill in this lacuna. Incriminating statement allegedly made by the petitioner before the enforcement authorities was retracted at the earliest after his release on bail, as is apparent from the representation dated 26-7-1988 made by the petitioner to the Enforcement Directorate, New Delhi (respondent No. 2). The impugned order of detention apparently is a glaring example of non-consideration and non-application of mind on behalf of the detaining authority.

11. It is also significant to note that even though the petitioner has made representation to the Directorate Authorities on 26-7-88 (shortly after his release on bail), it took about three months for the said authorities to reject the representation made by the petitioner and that too without passing any detailed order. No explanation whatsoever has been put forth on behalf of the respondents to explain this inordinate delay in considering the representation made by the petitioner which, amounts to a clear violation of the Constitutional guarantee under Article 22(5) of the Constitution of India.

12. I find support in my view from the authority of the apex court in T.A. Abdul Rahaman Vs. State of Kerala and others, , where the representation of the detenu has not been given prompt and expeditious consideration, and was allowed to lie without being properly attended to and, the explanation offered by the third respondent that the delay had occurred in seeking the comments of the Collector of Customs etc. was not found to be a convincing and acceptable explanation, the delay of 72 days in the absence of satisfactory explanation was considered too long a period for ignoring the indolence on the part of the concerned authority, and it was held that the unexplained delay in disposal of the representation of the detenu is violative of Article 22(5) of the Constitution of India, rendering the order of detention invalid.

13. On behalf of the respondents it has been submitted that the petitioner could not be arrested or detained in pursuance of the impugned order of detention, as he is absconding since 11-10-1988. Perusal of the affidavit of Shri Kuldeep Singh, Under Secretary, to the Government of India dated 9-1-1990 indicates that the accused did appear in the Court of Chief Judicial Magistrate, Jalandhar on 14-8-1989. It is true that the orders of the Chief Judicial Magistrate reproduced in the affidavit of Kuldeep Singh referred to above show, that, the petitioner did not appear in the said Court from 1-12-1988 to 3-6-1989, and, during this period only the warrants of arrest of the petitioner were issued. No proceedings u/s 82 or 83 of the Code of Criminal Procedure were initiated against the petitioner, nor, there is any other material on the record which would indicate that the petitioner actually absconded. Apart from that, no declaration that the petitioner was absconding was published in the official gazette as contemplated u/s 7(1) of the COFEPOSA Act. The fact that the petitioner appeared in the Court of Chief Judicial Magistrate, Jalandhar, on 14-8-89 falsifies the stand taken by the respondents that the petitioner has been absconding all along, after passing of the impugned order of detention. Besides, the affidavit of none of the police authorities to whom the detention order was forwarded for execution has been filed explaining the delay in securing the arrest of the petitioner. So, the explanation put forth on behalf of the respondents is unsatisfactory. This non-explanation also throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention, as held in T.A. Abdul Rahaman Vs. State of Kerala and others, .

14. It is also pertinent to note that neither any specific allegations have been made in the return filed by the respondents, nor, any material has been brought on the record which would in any manner indicate that the petitioner has indulged in any illegal or prejudicial activity under COFEPOSA Act, after passing of the impugned order of detention. Nor recovery of any foreign currency, or, other incriminating article or material has been effected which would support the case of the respondents that the petitioner has been continuously indulging in illegal, or, prejudicial activity under the COFEPOSA Act, in order to justify the passing of the impugned order of detention against the petitioner. -

15. For the foregoing reasons, the impugned order of detention (Annexure P-3) passed against the petitioner cannot be legally -sustained and the same is hereby quashed.

This petition is accordingly allowed.