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**(1995) 12 P&H CK 0087**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal W.P. No. 265 of 1995**

Sada Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 22-12-1995

**Acts Referred:**

Arms Act, 1959 — Section 25

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3

Constitution of India, 1950 — Article 22, 227

**Citation :** (1996) 64 ECR 22 : (1996) 2 RCR(Criminal) 423

**Hon'ble Judges :** Swatantar Kumar, J

**Bench :** Single Bench

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## Judgement

Swatantar Kumar, J.—This is a petition under Article 227 of the Constitution of India for issuance of appropriate directions quashing the order of detention dated 26.1.1986 passed against the petitioner by the Under Secretary, Punjab, u/s 3 of the COFEPOSA Act (hereinafter referred to as "the Act").

2. The facts as are on record that the petitioner is a citizen of India and is living in village Kohali. According to the petitioner he has been Sarpanch of the village till January, 1993 for about 14 years and was performing his duties regularly in that village but might have temporarily shifted during the peak of terrorism in the State. The petitioner submits that he has been the Director of Land Mortgage Bank, Ajnala. He claims to be a person fairly involved in political, agricultural and financial activities and completely disowns any connection with smuggling, nefarious or other connected activities. In this regard, the petitioner was taken by the Police as alleged on 9.3.1985 and was kept in illegal confinement and in this regard the petitioner has sent representation and telegram on 10.3.1985 to the various authorities. The petitioner claims that he has been falsely implicated in certain cases under F.I.R. No. 146 dated 16.3.1985 under Sections 25, 54 and 55 of the Arms Act and in F.I.R. No. 142 dated 14.3.1985 u/s 9 of the Opium Act. The petitioner was picked up and even taken to C.I.A. Staff, Amritsar where he

alleges that he was beaten up and illegally confined.

3. The concerned authorities on 18.1.1986 passed an order directing the detention of the petitioner under COFEPOSA Act. This order could not be served upon the petitioner as he was not traceable and was arrested on 14.3.1995 and order was served upon him. The petitioner filed a representation to the State Government on 6.3.1995 against the alleged illegal detention order, which was received by the State Government on 9.3.1995 and the State Government vide its order dated 31.3.1995 rejected the representation of the petitioner. The representation to the Central Government was received by the concerned authorities on 31.3.1995 and as such it remained with the authorities from 9.3.1995 till 31.3.1995 at the State Government level. The Central Government called for the comments of the authorities on 4.4.1995 which were received on 20.4.1995 and ultimately vide order dated 25.4.1995, the Central Government also rejected the representation of the petitioner.

4. On these facts, Id. Sr. Counsel for the petitioner Mr. Matewal has raised the following submissions:

1. (a) Inordinate delay of 22 days by the Central Government in disposing of the representation of the petitioner is fatal to the order of detention passed against the petitioner. Consequently, the petitioner is liable to be released forthwith.

(b) Similarly, the delay on the part of the State Government which again is unexplained from 9.3.1995 till 31.3.1995 also entitles the petitioner for the benefit of release.

2. The order of detention cannot be permitted to be executed against the petitioner inasmuch as the order of detention was passed on 16.1.1986 and it is sought to be executed against the petitioner in the year 1995. This itself is a ground for setting aside the said order of detention.

5. In reply to second submission, different counters have been filed on behalf of the Government of Punjab as well as of Union of India. In both these counters, it has been stated that the petitioner was declared a proclaimed offender vide order dated 28.11.1986 as he was not traceable. Thus, petitioner cannot take any benefit of the intervening period of 10 years. The petitioner was arrested after 10 years and the order of detention is being executed against him after such lapse. This delay itself is opposed to the law of preventive detention. In ground (6) of the grounds in addition to the facts averred in the Writ Petition, the petitioner has taken up a specific ground with regard to inordinate delay and violation of Article 22(5) of the Constitution of India. Reply to this delay is practically admitted and no explanation has been given to explain the delay except a vague statement that the comments were sent to the legal agency for examination and that is finally sent to the Government.

6. With regard to the first contention raised by the Id. Counsel for the petitioner, it is clear that the State Government had rejected the representation of the

petitioner after 22 days while the Central Government had disposed of the representation of the petitioner and rejected the same nearly after more than one month and ten days. The representation of the petitioner which was to be forwarded to the Central Government remained with the State Government for a period of 22 days and no explanation has been offered on record by the State Government as to why the representation of the petitioner was detained for this long period and without any purpose whatsoever. Further delay of 16 days was caused in disposing of the representation of the petitioner because the comments were called and the comments were not submitted by the State Government for a period 15 days. The detention of a person without trial has been consistently held to be violative of the basic protection to the liberty provided to every citizen of this country.

7. The Id. Counsel relied upon *Harish Pahwa v. State of Uttar Pradesh and Ors.* 1982 (1) Cha L R 65, *Shri. Saleh Mohammed Vs. Union of India (UOI) and Others*, and *Asian Ahmed Zahir Ahmed Shaik v. Union of India and Ors.* 1989 (1) R.C.R. 486. In all fairness, the Id. Counsel for the respondent did not dispute the proposition of law though they relied upon the judgment titled *Madan Lal Anand v. Union of India* 1990 (2) R.C.R. 58. The Counsel for the State submitted that the Government is not obliged to explain each day's delay as held in the judgments relied upon by the Counsel for the petitioner but rather only to give general explanation with regard to the delay if any cause for disposal of the representation.

8. While the contention of Mr. Sharma, Id. Counsel for the Union of India was that the Government is not at all obliged to explain the delay of every day as kind of routine matter. If the representation has been disposed of within a reasonable period, according to him, this entire period of nearly a month and a half is to be construed as the reasonable period.

9. The Counsel for the State of Punjab relied upon the case of *Madan Lal Anand* (supra) and emphasised the following observation of the Hon'ble Supreme Court:

It has been observed that the time imperative can never be absolute or obsessive and that the occasional observation made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. In the instant case, the detaining authority has explained the delay in the disposal of the representation made by the detenu and accordingly the order of detention cannot be rendered invalid on that ground.

Thus the consistent view which has been pronounced by the Hon'ble Supreme Court of India in various cases is that an unexplained delay of the period violates the Constitutional rights of the petitioner/detenu and consequently violates the Constitutional obligations enshrined in Article 22(5) of the Constitution of India in

the case of Mahesh Kumar v. Union of India RCR 1990 (2) 639 held as under:

Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above is that the representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible, otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is occurred in the disposal of representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.

10. In the present case, as noticed above, the respondents have failed to render on record any plausible or reasonable explanation for the delay in disposal of the representation either by the State or by the Central Government. The delay being unexplained must result protection favourable to the petitioner and must vitiate the order of detention passed against the petitioner.

11. With regard to the other question that the petitioner was not available and was declared a proclaimed offender, I do not find it necessary to go into this controversy though the petitioner has offered on record reasonable explanation which could not be disbelieved straightaway. The explanation of the petitioner is that he was a Sarpanch till 1993 and was performing his normal duties as Sarpanch of the village. He further submits that he was also Director of Land Mortgage Bank and was discharging his duties in that capacity as well. This explanation has not been refuted by the respondents in reply.

12. Resultantly, this petition succeeds and the order of detention dated 16.1.1986 is hereby quashed and set aside. The petitioner is set at liberty forthwith.

13. The counsel for the petitioner submits that during the pendency of this petition, the petitioner has been shifted to the Central Jail, Amritsar, as such appropriate directions be sent to the Superintendent Central Jail Concerned. There will be no order as to costs.