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(1988) 01 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1167 of 1987

Satnam @ Satta and anr. APPELLANT

Vs

State of Punjab and anr. RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Citation : (1988) 1 AICLR 799 : (1988) 1 RCR(Criminal) 509

Hon'ble Judges : Ujagar Singh, J

Advocate : S.S. Saron, P.S. Bhullar, Advocates for appearing Parties

Judgement

Ujagar Singh, J.

1. Detention orders dated 9.12.1986. Annexures P1, P2, have been challenged by the petitioners on various grounds by way of this joint writ petition. District Magistrate, Amritsar, has mentioned that he was satisfied in respect of petitioners Satnam Singh alias Satta and Bohar Singh alias Sakkatar Singh, both residents of village Kamboh, Police Station Jhabal, District Amritsar, now in custody (petitioners) that with a view to preventing them from acting in any manner prejudicial to the maintenance of public order and security of State, it was necessary to detain them. It is also mentioned in the orders that the petitioners were directed to be arrested and detained in Central jail, Amritsar, Senior Superintendent of Police, Amritsar, was further directed to execute the orders and to lodge the petitioners in Central Jail, Amritsar, where the Superintendent of Police will supply the grounds of detention.

2. In the grounds of detention Annexures P3 and P4 dated 8.12.1986, the following items of activities are mentioned :

(i) On 21.9.1986 at about 11.30 p.m., the petitioner along with Gurbax Singh, Bohar Singh alias Sakkatar Singh, Avtar Singh alias Tari, Shinder Singh son of Mehar Singh and Swaran Singh son of Mohanta Singh armed with pistol and Takuas entered the house of Amrik Kaur widow of Sohan Singh Jat resident of village Darajke, police station Bhikwindi and committed daring dacoity in her

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house. The petitioners and others compelled her to part with the keys of her household and then they all started looting the property. When there was hue and cry and police party headed by Sub Inspector Gurcharan Singh reached the spot, Desa Singh and Avtar Singh were apprehended with the help of Balbir Singh, Santokh Singh and Surjit Singh. The petitioners and their companions also inflicted injuries on the person of Avtar kaur, Santokh Singh and Surjit Singh PWs. and a case FIR No. 233 dated 22.9.1986, was registered under Sections 395/397, Indian Penal Code, Sections 3/4 of the Terrorists Disruptive Activities Act and Section 25 of the Arms Act in Police Station Bhikhwindi.

(ii) The petitioners and their companions were saying that they were the men of Damdami Taksal of Bhindranwale and were after the creation of Khalistan and for that purpose the petitioners and their companions would commit dacoities for procuring arms and ammunition. The petitioners and their companions were apprehended on 26.9.1986.

(iii) The petitioners were interrogated by Sub Inspector Gurcharan Singh and during interrogation, the petitioners admitted their participation in the dacoity and recovery of pistol and cartridges from their possession. The petitioners also appear to be members of an extremist group whose purpose was to commit dacoities, loot property, acquiring arms and ammunition for creating panic.

3. On the said grounds, the District Magistrate felt satisfied that the petitioners should be detained with a view to preventing them from acting in such a manner prejudicial to the maintenance of public order and security of State and as such he passed the detention orders Annexures P1 and P2.

4. The petitioners made representations Annexures P5 and P6 on 23.12.1986, and sought opportunity to appear before the Advisory Board. Thereafter the detention orders were approved on 5.3.1987 vide Annexures P7 and P8 and the petitioners were to be detained for a period of twelve months from the date of their detention.

5. In reply to the petition Shri Ramesh Inder Singh, IAS, formerly District Magistrate, Amritsar, by way of affidavit has mentioned that the relevant material on which the detention orders were passed were duly supplied to the petitioners on 11.12.1986. It also mentioned that the representations made on 2.1.1987 through Superintendent, Central Jail, Amritsar, were received in his office on the same day and the requisite comments thereon were sent to the Government on 8.1.1987. In reply to the averments for quashing the said detention orders of the petitioners, it is mentioned that the case of the petitioners is quite distinguishable from that of Dessa Singh and Avtar Singh as the petitioners were apprehended on 26.9.1986 while raising slogans whereas their companions escaped. Similarly is the reply given by Sh. V.V. Chadha, Under Secretary to Govt. Punjab, Home Department, Chandigarh by way of affidavit. In this affidavit it is also mentioned that the representations made on 2.1.1987 by the petitioners were rejected on 21.1.1987. This affidavit further adds that the

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petitioners were making strenuous efforts for their release from custody and there was imminent and every possibility of their being set at liberty.

6. The learned counsel for the petitioners has urged that the said Avtar Singh and Dessa Singh who were coaccused with the petitioner in the said case filed Criminal Writ Petition No. 787 of 1987 and 366 of 1987 respectively against their detention orders. Those petitions were accepted and their detention orders were quashed. He has also referred to certain earlier petitions in which the detention orders were quashed on the ground that the petitioners were already in custody and there was no likelihood of their release on bail.

7. Counsel for the State has vehemently tried to support the orders of detention of the petitioners.

8. I have considered the arguments and have gone through the file minutely.

9. The only two points relevant for the decision of the case are: (i) the petitioners were already under detention in the said case and there is nothing on the file that any bail application was moved or if any bail application was moved, it was opposed and what happened to that bail application and; (ii delay in considering the representations has not been explained.

10. Admittedly, the petitioners were in custody and the respondents have placed no document on the file showing that any bail application was made by the petitioners for their release on bail and that their release was imminent. In such cases when detenu is already in custody, burden lies on the respondents to show the imminent release of the detenu/detenus. In any event, if any application is made for their release on bail, it is the duty of the respondents to oppose the same and, if bail is granted, to challenge the same in the higher Court on the ground of prejudicial activities. In this case, I do not find that any bail application was ever given and the offence in the said case was so serious that there was no likelihood of the acceptance of the bail application. There are number of authorities of this Court as well as of the Hon''ble Supreme Court on this point.

11. Representations were admittedly made on 2.1.1987 and the same were rejected on 21.1.1987, and the petitioners were informed on 28.1.1987. Nothing has been placed on the record to give any explanation as to what happened during this period. The history of cases with regard to prevent detention shows that unexplainable delay for considering all the representations has always been held to be fatal. In the case Harish Pahwa v. State of UP and ors., 1981(3) SCR 276, the representation of the detenu was received by the State Government on 4.6.1980 and the representation was rejected on 24.6.1980. In between comments were called for from Custom authorities on 6.6.1980 and the same were received on 13.6.1980. On 17.6.1980, the State Government referred the representation to its Law Department for its opinion which was furnished on 19.6.1980. Rejection of the representation on 24.6.1980 was communicated to the jail authorities two days later. In that case it was held that there was no explanation given by the State Government as to why no action was taken on the

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representation by the detenu on 4th, 5th and 25th June, 1980, and what consideration was given by the Government from 13.6.1980 to 16.6.1980 and it was on that ground that there was inordinate delay in considering the representation of the detenu and the detention was bad in law. This case has been relied upon in the case Piara Singh v. The State of Punjab, 1987(2) Recent Criminal Reports 473 (SC) : 1987 IV SVLR (Cr.) 1 , in which their Lordships of the Supreme Court approved the principle and the detention was quashed on similar grounds.

12. In view of my observations made above, this petition is accepted and the detention orders Annexures P1 act P2, grounds of detention Annexures P3 and P4 and the approval orders Annexures P7 and P8 are quashed and the petitioners are directed to be set at liberty forthwith, unless they are required in any other case.

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