

(1988) 09 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1393 of 1988

Sukhpal Singh

APPELLANT

Vs

Union of India and ors.

RESPONDENT

Date of Decision : 27-09-1988

Acts Referred:

Citation : (1989) 1 RCR(Criminal) 393

Hon'ble Judges : S.D.Bajaj, J

Advocate : M.S Bedi, R.S. Randhawa, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. Vide order Annexure P.1 Shri Sukhjinder Singh Ex. Education Minister, Punjab, father of Sukhpal Singh petitioner, has been detained by the President of India under the National Security Act, 1980 and lodged at Agartala Jail. Alleging that the detention at a far off place from Punjab was punitive in nature because it deprives the detenu of his right to meet relations, arrange defence and to produce evidence before the Advisory Board, the petitioner has moved this Court for obtaining a writ to declare the detention as illegal.

2. Respondent State in reply urged that the detention of Shri Sukhjinder Singh at Agartala became necessary to secure the effectiveness of his incarceration and was thus not punitive in nature. It was also asserted that his close relations and even others have had an interview with him in the end of August 1988 and revision against detention had also been filed by the detenu.

3. I have heard Shri R.S. Randhawa, Advocate, for the petitioner, Shri M.S. Bedi, Advocate, for the State and perused the record.

4. Referring to the observations in A.K. Roy v. Union of India and another, AIR 1982 Supreme Court 710 it has been urged by the learned counsel for the petitioner that the detention of the Petitioner's father at Agartala, a place far off from his home land of Punjab is obviously punitive in nature. Relevant

observations reads :

By Section 5 every person in respect of whom a detention order has been made is liable

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify ; and

(b) to be removed from one place of detention to another place of detention, whether in the same State or in another State, by order of the appropriate Government.

The objection of the petitioners to these provisions on the ground of their unreasonableness is not wholly without substance. Laws of preventive detention cannot, by the back door, introduce procedural measures of a punitive kind. Detention without trial is an evil to be suffered, but to no greater extent and in no greater measure than is minimally necessary in the interest of the country and the community. It is neither fair nor just that the detenu should have to suffer detention in "such place" as the Government may specify. The normal rule has to be that the detenu will be kept in detention in a place which is within the environs of his or her ordinary place of residence. If a person ordinarily resides in Delhi, to keep him in detention in a far off place like Madras or Calcutta is a punitive measure by itself which, in matter of preventive detention at any rate, is not to be encouraged. Besides keeping a person in detention in a place other than the one where he habitually resides makes it impossible for his friends and relatives to meet him or for the detenu to claim the advantage of facilities like having his own food. The requirements of administrative convenience, safety and security may justify in a given case the transfer of a detenu to a place other than that where he ordinarily resides, but that can only by way of an exception and not as a matter of general rule. Even when a detenu is required to be kept in or transferred to a place which is other than his usual place of residence, he ought not to be sent to any far off place which, by the very reason of its distance, is likely to deprive him of the facilities to which he is entitled. Whatever smacks of punishment must be scrupulously avoided in matters of preventive detention.

Since section 5 of the Act provides for as shown by its marginal note, the power to regulate the place and conditions of detention, there is one more observation which we would like to make and which we consider as of great importance in matters of preventive detention. In order that the procedure attendant upon detentions should conform to the mandate of Article 21 in the matter of fairness, justness and reasonableness, we consider it imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time

to time. This Court has stated time and again that the person who is taken in custody does not forfeit, by reason of his arrest, all and every one of his fundamental rights. It is, therefore, necessary to treat the detenu consistently with human dignity and civilized norms of behaviour."

5. The thrust of the observations aforesaid was restricted and clarified further by the Supreme Court itself in *Mrs. Geetinder Kaur v. State of Punjab and others*, 1985(2) R.C.R.(Criminal) 292 : AIR 1983 Supreme Court 1409 as follows :

"Mr. Hardev Singh contends that the detenu should have been detained in preventive custody in the State of Punjab, which is his home State, or in any event at a place not far off from that State. We have given the matter careful thought. While it is ordinarily desirable that a detenu should be detained in an environment natural to him in point of climate, language, food and other incidents of living, in the actual decision concerning the place of detention these considerations must yield to factors related to, and necessitated by, the need for placing him in preventive detention. While we maintain that the condition imposed upon a detenu held in preventive detention must not be punitive, they must nevertheless be such as to secure the effectiveness of his miscarceration. The respondents have given reasons for detaining the detenu at Bharatpur, and we are not persuaded that the law allows us to interfere in the matter. The place of detention is a matter for the administrative choice of the detaining authority and a Court would be justified in interfering with that decision only, if it was in violation of any specific provision of the law or was vitiated by arbitrary considerations and mala fide. No such material has been placed before us. On the contrary, the affidavits filed by the respondents on the record indicate that the mind has been applied to the facts and circumstances of the case and that it was felt necessary to effect the detention at Bharatpur. It may be observed that the city of Bharatpur, although situated in the State of Rajasthan is not very distant from the States of Punjab and Haryana. In the circumstances, we find ourselves unable to grant the relief sought by Mr. Hardev Singh in respect of the place of detention."

In the light of the observations aforesaid Cr. W.P. No. 1393 of 1988 is obviously rendered without merit and is consequently dismissed as such. To meet the ends of justice it is, however, ordered that the petitioner would approach the Advisory Board stationed at Chandigarh with the request for allowing the detenu to produce evidence before it at Agartala and in case his prayer is granted by the Board, the expenses for taking those witnesses to Agartala would be borne by the respondent State.

JUDGMENT accordingly.