

(1994) 09 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Criminal Writ No. 640 of 1993

Virsa Singh

APPELLANT

Vs

Joint Secretary to Government of India

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Citation : (1995) 1 RCR(Criminal) 123

Hon'ble Judges : V.K.Jhanji, J

Advocate : D.D. Sharma, R.S. Randhawa, Advocates for appearing Parties

Judgement

V.K. Jhanji, J. (Oral)

1. This petition under Articles 226 of the Constitution of India has been filed by Virsa Singh, petitioner, for quashing detention JUDGMENT dated 28.2.1989 and grounds of detention dated 28.2.1989.

2. Briefly, the facts are that on 5.2.1989, truck No. DIG3677, on 6.2.1989 truck No. DIG2177 and on 9.2.1989 truck No. DIG2277 were intercepted by the officers of Directorate of Revenue Intelligence. These trucks were intercepted at different place in Punjab and Delhi. The occupants of the above trucks, namely Jagir singh @ Jagira, Multan Singh s/o Jagat Singh, Inderjit Singh s/o Buta Singh, Satnam Singh @ Satta. Mohinder Singh, Balbir Singh and Chhinder Singh, were arrested under Section 104 of the Customs Act and their statements recorded under Section 108 of the said Act, in which they stated that petitioner was actively associated in the smuggling of gold biscuits recovered on different dates from different trucks, and from different person. On 28.2.1989, the Joint Secretary to Govt. of India, Department of Revenue, specially empowered under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) (in short, the 1974 Act), made an order to detain the petitioner with a view to prevent him from smuggling goods. On getting information of the detention order having been passed, petitioner filed a writ petition No. CO No. 3039 (W) of 1989 on 27.3.1989 in the Calcutta High Court, but the same was dismissed by the Calcutta High Court on 12.8.1992.

Before the detention order could be executed against the petitioner, he filed Civil Writ Petition No. 573 of 1993 in this Court, which on 3.11.1993, was got dismissed as withdrawn with permission to file a fresh petition on the same cause of action. Thereafter, the present petition was filed in this Court on 30.11.1993. To this petition, petitioner has annexed the purported copies of order of detention and the grounds of detention on which the order is based. However, it has not been averred in the petition as to how petitioner came into possession of these documents. The order of detention is being sought to be quashed on the ground that the same is dated 28.2.1989 and has not been executed for a period more than five years and thus, has lost its efficacy and the purpose for which it was passed. According to the petition as well as according to the counsel for the petitioner, at this belated stage the execution of detention order would be punitive and not preventive, which is not permissible under Detention Law.

3. Upon notice of the petition, written statement has been filed by the respondent by way of an affidavit of Sh. K.L. Verma, Joint Secretary to Govt. of India, Ministry of Finance, Department of Revenue, New Delhi, wherein it has been stated that the petition deserves to be dismissed not only on merits, but also on the ground that petitioner is permanently residing and engaged in business at Delhi and, therefore, writ petition in this Court is not maintainable for want of territorial jurisdiction. It has also been stated that the writ petition is not maintainable where the detention order has not been executed upon the detenu. It has further been stated that petitioner is absconding and as such, could not be detained so far.

4. Learned counsel for the petitioner in order to meet the preliminary objection as to whether the detenu or anyone on his behalf is entitled to challenge an order of detention without the detenu submitting or surrendering to it, contended that this Court has the jurisdiction to entertain the petition in case the detenu satisfies this Court that the grounds on which detention order is made, are vague, extraneous and based upon irrelevant grounds.

5. The question as to whether a detenu or anyone on his behalf is entitled to challenge an order of detention at the predetention stage, has been considered by the Three Bench Judges of the Supreme Court in *The Additional Secretary to the Govt. of India and others v. Smt. Alka Subhash Gadia and another*, 1992 SCC (Cri.) 301. The Supreme Court has answered this question in the following words :

"It is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in the proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the preexecution stage are necessarily very limited in scope and number, viz. where the courts are prima facie satisfied (i) that the impugned order is not passed, (ii) that it is sought to be executed against a

wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds, or (v) that the authority which passed it had so authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on and other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

In this very judgment, the Supreme Court reiterated that in rare cases where the detenu before being served with detention order, learns about the same and the grounds on which it is made and satisfied the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition, even at the predetention stage, of course, on the very limited grounds stated above. This principle was approved by another Three Bench decision in *N.K. Bapna v. Union of India*, (1992) 3 SCC 512. Thus, it now stands settled that only in rare, genuine and exceptional cases, the Courts have the power to interfere with the detention order at the predetention stage. The detenu cannot claim such exercise of powers as a matter of right. The discretion is on of the Court and it has to be exercised judicially on wellsettled principle.

6. In the present case, admittedly, the petitioner is absconding and has been evading service of detention order. The first effort was made by the petitioner when he, showing himself to be resident of Calcutta, filed a writ petition on 27.3.1989 in the Calcutta High Court, which was dismissed on 12.8.1992. Having failed to get an order of quashing, petitioner filed Civil Writ Petition No. 573 of 1993 in this Court and on 9.11.1993, got it dismissed as withdrawn with permission to file a fresh petition on the same cause of action. The present petition was filed by him on 30.11.1993 and by misrepresentation, he got his arrest stayed. Petitioner now cannot be allowed to turn around and say that the detention order is liable to be quashed because the same has so far not been executed. As regards the contention of the counsel that the detention at this point of time would be punitive and not preventive, suffice it to say, there is no scope for interference by this Court on this ground as the delay here has occasioned not by any omission or commission on the part of the detaining Authority, but on the contrary, it is the petitioner who has delayed the execution by first moving the Calcutta High Court and then this Court. The present petition, to my mind, is nothing but an abuse of process of the Court and deserves dismissal with exemplary costs.

Consequently, this writ petition stands dismissed with costs which are quantified at Rs. 10,000/- to be paid within three months to be Legal Aid Cell, Punjab, failing which the Legal Aid Cell, Punjab would be entitled to recover the amount in execution of this order.

7. Copy of this order be also sent to the Legal Aid Cell, Punjab, for information.