

(1995) 10 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal W. No. 143 of 1995

Satwinder Singh alias Pinka

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Oct. 19, 1995**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Foreign Exchange Regulation Act, 1973 - Section 9
- Penal Code, 1860 (IPC) - Section 411, 414

Citation: (1996) CriLJ 601 : (1996) 1 RCR(Criminal) 619**Hon'ble Judges:** Swatanter Kumar, J

Bench: Single Bench

Advocate: R.S. Ghai and Bipan Ghai, for the Appellant; D.D. Sharma, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Swatanter Kumar, J.

This petition under Articles 226/ 227 of the Constitution of India is directed against the order of detention dated 11 -10-1994 Annexure P/I to the writ petition. The petitioner claims to be a citizen of India and states that he has been falsely implicated in a criminal case at the instance of Police Station, Sadar, Jalandhar, the police of which is inimical to the petitioner and his relatives. A case under Sections 411, 414 of Indian Penal Code and 9(b) and 9(d) of FERA, 1973 in F.I.R. No. 134 dated 27-6-1994 was registered against the petitioner. The petitioner was arrested from his native village in presence of the Panchayat on 27-6-1994 and kept in illegal custody till 29-6-1994. The police took remand of the petitioner and petitioner is stated to have made a statement to the enforcement officials. The petitioner after release on bail immediately made a representation to the Director of FERA Department. In this representation the petitioner had specifically averred that the confessional statement was recorded under duress and the petitioner has been

falsely implicated. After considering the matters, the order of detention was passed on 11-10-1994 but the petitioner was detained on 22-12-1994 when the petitioner was on bail.

2. According to the respondent the detention order was passed by the detaining authority after due application of judicious mind and after due subjective satisfaction. Representation was made by the petitioner but the respondent sent a reply on 9-9-1994. The petitioner is stated to be detained in accordance with law and on correct and proper facts. The order of detention was confirmed by the Advisory Board on 10-2-1995. On these facts the counsel for the petitioner has raised the following grounds for consideration :-

i) The Advisory Board vide order dated 10-1-95 had revoked the order of detention in case of other two detenus. The said order was not taken into consideration while the order of detention against the petitioner was confirmed by the Central Govt. on 9-3-1995. The order is, therefore, bad and specially when identical role was attributed to all the accused.

ii) There is delay in passing the order of detention as well as execution of the order. The two representations of the petitioner dated 20-7-1994 and 26-7-1994 were not considered by the authorities and such non-consideration vitiates the order.

iii) There was no allegation that the petitioner while on bail had indulged in any activity and lastly the representation of the petitioner was not received by the Board as aforestated and the rejection thereof is not by the competent authority.

3. Since the Court had noticed some contradictions between the reply filed on behalf of the respondent and the arguments submitted on behalf of the learned counsel for the respondent, in Court, the matter was directed to be listed for rehearing vide order dated 17-10-1995. As Mr. Sharma was not available on that date, the matter was adjourned to 18-10-1995. On 18-10-1995 Mr. Sharma was not available, the matter was adjourned for today i.e. 19-10-1995 for rehearing.

4. Out of the grounds which have been mentioned by me, the learned counsel for the petitioner presses upon ground No. 1. The submission of the learned counsel for the petitioner is that the allegations for the grounds of detention made against him were identical to that of Kuldeep Singh, Satwinder Singh, Samuel and Vimmi. The other co-detenus were directed to be released vide orders of the Advisory Board dated 10-1-1995. However, the Advisory Board opted to pass an order of detention on 10-2-1995 against the petitioner. The order of release of other co-detenus was not placed before the Competent Authority of the Central Government while confirming the order of detention dated 9-3-1995. Learned counsel for the petitioner submits that the order of release in the case of co-detenus dated 9-1-1995 was not even taken into consideration by the Advisory Board itself. The grounds in this regard have been specifically taken by the petitioner by filing additional grounds and in the grounds B to E, these facts constituting the grounds of attack

have been specifically pleaded. In reply to this, the Government had filed its additional affidavit stating that the detention order against the petitioner was passed after considering the material on record. This reply to say the least is vague and most unsatisfactory. To verify the facts, the Court had granted time to the learned counsel for the respondent. Learned counsel received fax message, on the basis of which it is conceded that the order dated 10-1-1995 was not considered by the Advisory Board while passing the order of detention in the case of the petitioner. Facts get importance because there is no specific averment in the reply filed that the order of release in the cases of other detenus was considered even by the Advisory Board or by confirming authority i.e. Central Government. The Government cannot seek advantage of his vague facts pleaded because it is settled rule of law that pleadings by a party form basis of his submissions and the arguments which normally would not be permitted to go beyond pleadings in the matters of detention which involve the liberty of an individual. It is expected that the Government would be more specific definitely in its stand before the Court and the Government would not take such matters lightly and rely upon vague pleadings. It may result in injustice to a citizen whose liberty is at stake.

5. Learned counsel for the petitioner relies upon the judgment of this Court in the case of *Gurnam Singh v. State of Punjab* reported as 1992 3 All ICLR 663. While considering some-what similar situation the Bench of this Court quashed the order of detention because the order of release in the case of co-detenu/accused was not considered by the competent authorities. The principle that needs to be taken into consideration in such cases is that each document has to be weighed from the best principle whether its placement before the authority would influence the mind of the authority one way or the other. The absence of a document like the order of release of co-accused/detenus certainly affects the judgment of the Authority concerned and specially when the allegations against co-accused are identical to that of the accused in the present case. In the case of [Ashadevi Mehta \(Detenu\) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another](#), the Supreme Court has observed as under at page 451, of AIR :-

"... since admittedly the aforesaid vital facts which would have influenced the mind of detaining authority one way or the other were neither placed before nor considered by the detaining authority it must be held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the impugned detention order invalid and illegal...."

6. Non-consideration of the order of release in the case of co-accused by the Advisory Board as well as the Confirming Authority has certainly prejudiced the interest of the petitioner and the order of detention cannot be permitted to stand. The petitioner has in fact already undergone practically entire period of imprisonment and has to be released in the first week of November, 1995 when the

period of detention order would expire.

7. In view of above discussion, this Court is inclined to weigh the first contention of the learned counsel for the petitioner and therefore, it is not necessary for the Court to discuss in detail the other grounds taken up in the writ petition and as mentioned above.

8. In view of above discussion, initial order of detention dated 11-10-1994 and order of Advisory Board dated 10-2-1995 are hereby quashed. The petitioner is directed to be set at liberty forthwith. There shall be no order as to costs.