

(1995) 01 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 588/94

Baldev Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 17, 1995

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 7, 7(1)
- Constitution of India, 1950 - Article 226, 227

Citation: (1995) CriLJ 2767

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

Bench: Single Bench

Advocate: R.S. Ghai and Bioan Ghai, for the Appellant; A.K. Walia, Asstt. A.G. and D.D. Sharma, A.S.C. for Union of India, Res. No. 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.K. Bali, J.

Baldev Singh alias Deba Adhi through present petition filed under Article 226/227 of the Constitution of India seeks issuance of a writ directing the respondents to release him by setting aside the order dated 23rd of January, 1989 passed by the State of Punjab respondent No. 1 (Annexure P-1) under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act). There are number of grounds asking for setting aside the detention order but Mr. R.S. Ghai, learned Senior Counsel appearing for the petitioner has confined his arguments to basically one point which shall be noted hereinafter as according to him if the said point itself is sufficient for quashing the detention order then there arises no necessity, at all, in examining other points. Before, however, the solitary argument raised by the learned Counsel is noticed, it shall be useful to

trace the facts of the case though briefly.

2. On the intervening night of 14/15th May, 1988, a special make was laid in the area of village Bharopel between BP. No. 119/8-10 by the BSF, on the basis of an information. At about 00.45 hrs. the naka party observed the movements of three persons who were coming from Pakistan side. When they came closer to the naka party, they were challenged to stop and fired upon by the naka party and two of them escaped to wards village Daoke side and the third managed to escape towards Bharopal side leaving behind the torn shirt and cloth Vansali containing gold biscuits: On search of the area, five more Vansalies of gold and two chaddar were recovered, The recovered six Vansalies were opened in the presence of BSP Officers and these were found to contain 459 gold biscuits of ten tolas each bearing foreign markings. Two chits written in Urdu were also recovered from the said Vansalies. The allegation against the petitioner is that these gold biscuits were to be delivered to him and his brother Sukhdev Singh. At other place in the grounds of detention it is also mentioned that one Gurmukh Singh alias Billa had brought the slips, from the petitioner and that the consignment of recovered gold biscuits were to be delivered to petitioner's younger brother Sukhdev Singh alias Sukha. Before the matter may proceed, it requires to be mentioned here that so far as Sukhdev Singh is concerned, the detention order against him was revoked by the Government on the advice of the Advisory Board.

3. It is an admitted position that whereas the occurrence is of the year 1988, the order of detention was passed on 23rd of January, 1989. The order of detention was executed in July 1994. Mr. Ghai learned Counsel appearing for the petitioner contends that unexplained delay in executing the detention order in itself would be enough to set aside the detention order Annexure P-I. For his aforesaid stand, the learned Counsel relies upon the judgment of the Supreme Court in [P.U. Iqbal Vs. Union of India \(UOI\) and Others](#) .

4. With a view to explain delay in executing the order all that has been mentioned in the written statement filed on behalf of the respondents is that order was passed on 18-1-1989 and has been executed in July 1994. Strenuous efforts were made to serve the detention order on the petitioner but the petitioner was hiding himself in different parts of the country and was playing hide and seek with the police and intentionally evading the execution of the detention order. There was delay in executing the order for the reason that petitioner intentionally went underground and concealed himself for evading his arrest. The detention order was passed keeping in view the legal position as contained in the COFEPOSA Act. It is further pleaded that non-service of detention order till July 1994 does not mean that the detention order passed against the petitioner is illegal. The contents of the written statement as noted above were not found enough to make out it a case of properly explaining the delay and for that reason when the case was argued on 4th January 1995, Mr. A. K. Walia Assistant Advocate General, representing the State sought an

opportunity to file Additional Affidavit of Deputy Secretary Home giving therein the details of the steps/proceedings initiated against the petitioner for securing his detention. The additional affidavit has been filed. The relevant extract of the same reads thus:-

" That in reply to para 4 (b) of the petition, it is submitted that the detention order of this case was passed on 23-1- 89 and the same was executed on 14-7-94, as the petitioner had gone underground and continued to play hide and seek with the police. The detention order was sent to the SSP/Amritsar for effecting execution of the order vide letter No. 482 dated 25-1 -89. On receipt of the detention order the Distt. Police conducted raids at his village and at several other hide-out of the petitioner, but to no avail. Entries regarding their raids were made in the Roznamchas. These Roznamchas are not available for production at this stage as the same are destroyed after two years of the last entry as per rules. During this period SSP/Amritsar was reminded vide letters dated 23-5-89,24-10-89,11-1-90 TPM dated 7-9-90 letter dated 19-9-90, TPM dated 10-10-90, letter dated 12-10-90 and letter dated 9-11-90 to make special efforts to arrest the petitioner and to execute the detention order. However, when it became clear that strenuous efforts made and continuous raids conducted to execute the detention order had not borne fruit. The State Govt. initiated action u/s 7(1)(a) & 7(1)(b) of COFEPOSA Act against the petitioner on 3-12-90. Accordingly a report u/s 7(1)(b) of COFEPOSA Act and order dated 3-12-90 u/s 7(1)(a) of the COFEPOSA Act were prepared on 3-12-90. Accordingly a report u/s 7(1)(b) of the COFEPOSA Act was sent to the SSP/Amrtisar vide letter dated 3-12-90."

5. During the course of arguments today Mr. Walia, learned Assistant. Advocate General candidly concedes that neither any gazette notification of the proceedings u/s 7 of the COFEPOSA Act was issued nor the complaint was filed u/s 7(1)(a) of the said Act. Then facts of the case in P.U. Iqbal's case (supra) would reveal that as per the case of the respondents therein the order of detention dated 21-8-1989 was received by the Superintendent of Police. Thrissur on 1 -9-1989 who in turn directed the Circle Inspector of Police Curuvayur to apprenend the warrantee and that the Circle Inspector of Police reported to the Superintendent of Police, Thrissur on 16th September, 2nd October, 13th November, 1989 and 5th January 1990 that the warrantee namely the detenu was reportedly working at Bombay and the chances of his visit to his native place were awaited. Not being satisfied with the reports of the Circle Inspector of Police, the S.P. by his letter dated 24-11-1989 directed the Circle Inspector of Police to arrange to secure the detenu and execute the detention order at Bombay with the assistance of the local police. Despite the repeated orders of the S.P. dated 31st January 12th and 19th February, 14th and 22nd March, 1990 directing the Circle Inspector to send reports about the compliance of his direction in executing the warrant, the Inspector sent a reply on 30-3-1990 to the S.P. informing that the police officers were being sent to Bombay to arrest the warrantee i.e. the detenu. On 2-4-1990, the S.P. reported to the Government that

the action was underway to execute the detention order by deputing officers to Bombay .On 23-4-1990 the S.P. asked a report about the stage of the matter from the Inspector of Police who thereupon on 20-5-1990 reported to the S.P. that the police party could not arrest the petitioner and execute the warrant. Then on 14-5-1990, the Government issued an order u/s 7(1)(b) of the Act and requested the Chief Judicial Magistrate, Thrissur to take action u/s 7(1)(a) of the Act. On 9-8-1990, the Inspector of Police arrested the petitioner from Kandanisseri and reported the fact to the Superintendent of Police who in turn informed the Government and the Chief Judicial Magistrate about the execution of the warrant on 10-8-1990. The facts fully detailed above would reveal that the order of detention was executed after seven months. The facts further reveal that the complaint was filed u/s 7(1)(b) of the COFEPOSA Act. Even on the facts as available and as has been mentioned above, the Apex Court observed as follows:-

"Reverting to the case on hand, as we have pointed out *ibid*, there has been nearly 7 month's delay at the hands of the Circle Inspector in executing the Warrant and a total period of one year delay in securing the detenu and serving the order from the date of the passing of the detention order by the detaining authority, which delay is unreasonable and stands unexplained. In our opinion, the lucid apathetic attitude and the oblivious and contumacious conduct of the Inspector in not acting with greater promptitude in securing the detenu but conspicuously sleeping over the matter well-nigh nearly 7 months have rendered the order of detention invalid. The explanation offered by the second respondent and the police officers that the detenu was a fugitive, eluding the dragnet of the detention order is too incredulous to be swallowed. Further, no Court will implicitly accept this kind of incredible explanation.

6. Observations of the Supreme Court in the case referred to above apply to the present case. There has been an unexplained delay in executing the detention order. It is only after 4¹/₂ years that the detention order was executed and the explanation of the respondents as has been noticed above cannot be accepted particularly when no steps concededly were taken to publish the notification in the Official Gazette required u/s 7(1)(b) of the COFEPOSA Act and no complaint was filed u/s 7(1)(a) of the said Act.

7. The petition, thus, succeeds and is accordingly allowed. The detention order Annexure P-I is quashed. A direction is issued to respondent Nos. 1 and 2 to set the petitioner at liberty forthwith.