

(1996) 08 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Petition No. 184 of 1996

Gurnaib Singh

APPELLANT

Vs

Deputy Secretary Home (A),
Government of Punjab and
Others

RESPONDENT

Date of Decision: Aug. 30, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 3(1), 37

Citation: (1997) CriLJ 2402 : (1997) 1 RCR(Criminal) 389

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: H.K. Dhillon, for the Appellant; Ramanjit Singh, A.A.G. and D.D. Sharma, A.S.C., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jain, J.

This petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the detention order No. 5-8-95-2HIII (PII NDPS)/802 dated 15-5-1995 (Annexure P. 1), passed u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter called "the Act").

2. The facts, as can be gathered from the grounds of detention (Annexure P. 2), are that on 30-10-1994, a police party headed by Shri Narinderpal Singh, Superintendent of Police, Moga, was on patrolling duty. Near the bridge of Sernnala in the revenue limits of village Chur-Chak, an Ambassador car bearing No. PB-29-7264 was sighted coming from the opposite direction. On asignal, the car was stopped. One Bhanwar Singh alias Bhawani Parshad Singh was on the steering wheel. The petitioner was

sitting by the side of the said driver in his cabin. The Superintendent of Police, after obtaining no objection from the petitioner and his associate, searched the car. As a result thereof, two packets containing opium wrapped in glazed paper were recovered from the backside of the front seat of the said car. Each packet weighed 10 Kgs. 50 Gms. of the contents were taken out from each of the two packets by way of sample. The samples and the remaining opium were converted into separate sealed parcels and the same were taken into possession by preparing a seizure memo. As no permit or licence could be produced, FIR No. 73 dated 30-10-1994, was registered against the petitioner and his associate, at Police Station, Mehna, for an offence u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1988 (for short called "the ND and PS Act").

3. The State Government, after having been satisfied that the petitioner has been engaging in possession, sale and importing inter-state narcotic drugs, passed the impugned order of detention with a view to preventing the petitioner from indulging in the said prejudicial activity in future.

4. The detention order and the grounds of detention have been assailed on the grounds that the petitioner was arrested in the aforesaid case and his bail application was rejected by the Sessions Judge on 18-4-1995 and thereafter by the Punjab and Haryana High Court, that after the rejection of the bail application, there was no chance of the petitioner being released on bail during the trial but in spite of this fact, respondent No. 1 passed the impugned detention order dated 15-5-1995 (Annexure P. 1), that there is a delay of more than 6 months in passing the impugned detention order from the date of the alleged prejudicial activities, that the detention order was served upon the petitioner on 25-5-1995 and there is no explanation for delay in serving when the petitioner was in custody since 19-10-1995, that there was no material with the detaining authority to believe that the petitioner would be released on bail and the detention order has been passed only to supplant the criminal proceedings. It has been further stated that the petitioner made representation to the State Government, Advisory Board and the Central Government on 8-8-1995, which has not been decided till today, nor there is any explanation for the delay in deciding and communicating the result thereof to the petitioner. It has been further stated that the petitioner has not been supplied the material documents nor he was produced before the Advisory Board within the stipulated period.

5. In reply the respondents have stated that the detention order has been passed by the Competent Authority after having been satisfied regarding the prejudicial activities on the part of the petitioner and due to the compelling reasons so as to prevent the petitioner from indulging in the same activities after he was released. It has been further stated that there is no delay either in the passing of the detention order or in serving the same upon the petitioner as the time had been taken in processing the case by the various branches of the department concerned. It has

been further stated that the petitioner was produced before the Advisory Board within the stipulated period and his representation was examined and rejected on 8-9-1995 by the competent authority. It is, thus, stated that the detention order was passed after taking into consideration all the facts and circumstances along with the relevant documents and after proper application of the mind.

6. I have heard the learned counsel for the parties and have perused the record.

7. Mrs. H.K. Dhillon, Advocate, learned counsel for the petitioner, has assailed the detention order (Annexure P. 1) and the grounds of detention (Annexure P. 2) mainly on the ground that the detention order was passed when the petitioner was already in judicial custody; the detaining authority had no material before it to come to the conclusion that the petitioner, if released on bail, would again indulge in prejudicial activities; non-showing of compelling reasons has vitiated the detention order.

8. Counsel for the petitioner urged that the detention under the Act is preventive and not punitive and is meant to check prejudicial or objectionable activities of the detenu. The purpose of detention is to prevent the petitioner from indulging in illicit traffic in narcotic drugs, sale and importing narcotic drugs. She contended that this could be done only if the petitioner is released from his earlier detention but when the petitioner was already in custody and his bail application had been rejected, there was no ground to order his detention.

9. In answer to these submissions, Shri Ramanjit Singh, Assistant A. G., Punjab, has contended that the detaining authority has passed the detention order on the basis of the material on record after due application of mind. He has submitted that the detaining authority was aware of the fact that the petitioner was in judicial custody but it apprehended that the petitioner was likely to indulge in prejudicial activities in case he was released on bail and that, therefore the detaining authority deemed it proper to pass the detention order.

10. After hearing the learned counsel for the parties, I am of the view that the impugned detention order (Annexure P. 1) along with the grounds of detention (Annexure P. 2) is liable to be quashed on the aforesaid grounds.

11. In [Dharmendra Suganchand Chelawat and another Vs. Union of India and others](#), a case of preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, it was held by the apex Court that "an order for detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that : (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which

it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of antecedent activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

12. The facts of the present case, if examined in the light of the aforesaid principle, it can be said that the first condition is satisfied inasmuch as the grounds of detention show that the detaining authority was aware of the fact that the petitioner was in custody on the date of passing of the detention order. The petitioner was arrested on 30-10-1994 and was produced before the Court on 31-10-1994. His bail application was rejected by the Sessions Judge, Faridkot, on 18-4-1995. The impugned detention order was passed on 15-5-1995 while the petitioner was in custody. It may be stated that the petitioner had applied for bail to this Court which, was also rejected before the passing of the impugned order.

13. The question which remains to be decided is whether there were compelling reasons for the detention of the petitioner although he was in custody. In the grounds of detention (Annexure P. 2), the detaining authority has mentioned that there is likelihood that the petitioner may get himself released on bail in the near future but no material has been disclosed therein which may lead to the conclusion that the petitioner was likely to be released on bail. The petitioner's application for bail had been rejected just one month before the passing of the impugned detention order. The grounds of detention disclose that the petitioner previously too was engaged in prejudicial activities which is an offence punishable under the NDPS Act, and as such, in view of the provisions of Section 37 thereof, there was no possibility of his being released on bail. However, no material worth the name has been placed on record in support of the statement made in the grounds of detention that the petitioner might have got himself released on bail and in that event he could have again indulged in the same prejudicial activities. Rather, it has come on record that the High Court too had dismissed the bail application of the petitioner. In this view of the matter, the order of detention cannot be sustained.

14. For the reasons recorded above, this petition is allowed and the order of detention (Annexure P. 1) is hereby set aside. It is, however, clarified that in case the petitioner is released from custody in criminal proceedings in FIR No. 73, dated 30-10-1994, registered at Police Station Mehna, for the offence u/s 18 of the ND and PS Act, 1985, the question of his preventive detention under the Act may be re-considered by the appropriate authority in accordance with law, and this decision would not construe as an impediment for that purpose.