

(1989) 10 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 2094 of 1988

Sukhwinder Singh Alias Sukha

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: Oct. 4, 1989

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 14, 3
- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 22, 61
- Official Secrets Act, 1923 - Section 3
- Penal Code, 1860 (IPC) - Section 411, 414

Citation: (1990) 2 ILR (P&H) 318

Hon'ble Judges: S.S. Grewal, J

Bench: Single Bench

Advocate: R.S. Bindra and H.S. Kamboj, for the Appellant; S.K. Bhatia, AAG, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Grewal, J.

This petition under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure relates to quashment of impugned detention order dated 31st May, 1988 (Annexure P-I), which was served on the Petitioner on 18th June, 1988.

2. The aforesaid detention order was passed by Under Secretary to the Government of Punjab, Home Department, u/s (3) of. the Conservation of Foreign Exchange Prevention of Smuggling Activities Act (52 of 1974) (hereinafter referred to as the Act), on the ground that the detenu at the instance of one Amrik Singh, a known

smuggler brought 50 packets of heroin with the help of his three co-villagers who acted as carriers and handedover the said heroin to Bhira a truck driver of his village in 3rd week of September, 1987 and received Rs. 9,000 from him. Out of the said amount detenu paid Rs. 2,000 each to the aforesaid three co-villagers, who, had acted as carriers, and, retained the remaining amount. On the night intervening 11th and 12th of November, 1987, detenu again smuggled 150 packets each containing 1 kg of heroin from Pakistan through one Sultan Singh and after reaching his village the detenu along with one Ghasita Singh of his village was intercepted by the police of Police Station Lopoke District Amritsar, while they were transporting those packets of heroin in the tractor of said Ghasita Singh and the recovery of the aforesaid heroin was effected by the said police. The detenu along with other co-accused was able to escape. About mid-night of 23rd December, 1987 the detenu and Ghasita Singh were bringing 17 packets of heroin from Pakistan and they were apprehended by the police. In this connection case FIR No. 250 dated 24th December, 1987 u/s 411/414 I.P.C. Section 3 of the Official Secrets Act, Section 14 Foreigners and Section 22/61/85 of Narcotic Drugs and Psychotropic Substances Act, was registered against the detenu in the police station, Lopoke, District Amritsar. Detention order was accordingly passed with a view to prevent the Petitioner from indulging in smuggling and other prejudicial activities in future.

3. Counsel for the parties were heard.

4. It was submitted on behalf of the detenu that the detenu was falsely implicated in the aforesaid criminal case when, he was already under illegal detention of the police and no recovery of any heroin, or, any other contraband article was effected from him. It was further submitted that A.S.I. Shayam Singh and A.S.I. Gurbachan Singh who were mixed up with the smugglers, misappropriated 17 packets of heroin out of the abandoned lot and as a result of the enquiry A.S.I. Shayam Singh was dismissed from service, whereas, A.S.I. Gurbachan Singh was demoted and those packets of brown sugar were planted on the detenu and his other co-accused.

5. These allegations have been denied in the written statement hied on behaf of the State and cannot be deemed to have been admitted as contended by the learned Counsel for the detenu nor, in the circumstances it would be desirable for this Court to go into the merits, or, dements of the criminal case registered against the detenu, and, his other co-accused, particularly, when the same is still pending decision before the trial Court.

6. Faced with this situation it was submitted on behalf of the detenu that there is long delay of about six months, from the date of the arrest of the detenu in the aforesaid criminal case before the impugned order of detention (Annexure P-I) dated 31st May, 1988 was served on the detenu on 18th June, 1988 and no plausible explanation has been putforth concerning the inordinate delay in passing the detention order.

7. It is true that the impugned order of detention was passed after about 5 1/4 months of the arrest of the detenu in the criminal case referred to above, but, there can be no hard and fast rule as to what is the length of time, which, may be sufficient to snap nexus between incident and order or detention. I am supported in my view by the authority in case Shiv Ratan Makim Vs. Union of India (UOI) and Others, , wherein it was held that it is no doubt true that where an unreasonably long period has elapsed between the date of the incident and the date of the order of detention, an inference may legitimately be drawn that there is no nexus between the incident and the order of detention and the order of detention may be liable to be struck down as invalid. But there can be no hard and fast rule as to what is the length of time which should be regarded sufficient to snap the nexus between the incident and the order of detention.

8. However, the fact remains that in the instant case, information about the other unlawful activities of the detenu referred to above came to light during the integration of the aforesaid criminal case. In the circumstances of the case it cannot be said that the order of detention was passed without any unreasonable delay and the said order is not liable to be quashed on that score. I find support in my view on this point by authority of the apex Court in case Kamal Pramanik Vs. The State of West Bengal .

9. It was further submitted that the detenu was granted bail in the aforesaid criminal case on 18th June, 1988 by the Additional Sessions Judge, Amritsar and instead of releasing the detenu in accordance with the orders passed by the said Court, the impugned order of detention was passed. Mere fact that it took about 18 days for serving detention order on the detenu in the jail would not necessarily lead to the inference that the impugned detention order was actually passed on 18th June 1988 when the detenu was granted bail by the Additional Sessions Judge, Amritsar. The delay of about 18 days in serving the detention order on the detenu in the Central Jail, Amritsar in the circumstances of the present case cannot be said to be without any sufficient cause.

10. It is pertinent to note that smuggling of large quantity of heroin from across the border would play havoc and would be hazardous for the public health, particularly, younger generation in our country. Thus the impugned order of detention has rightly been passed with a view to prevent the detenu from smuggling goods or engaging in transporting or concealing, or, keeping such smuggled goods as well as from indulging in such prejudicial activities in future. Instances of illegal activities of smuggling heroin in large quantity, on the part of the detenu, referred to above, clearly indicate that the same were inter linked, continuous in character and naturally the same would have to be curbed with a heavy hand. All these would constitute compelling necessity for the detaining authority to pass the impugned order concerning preventive detention.

11. I am supported in my view by the authority in case Suraj Pal Sahu Vs. State of Maharashtra and Others, . I am further supported in my view from the authority in case Vijay Kumar Vs. Union of India (UOI) and Others, wherein it was held that when the detenu is already under detention, the detaining authority would take into consideration the fact of detention of the detenu and there must be compelling reasons to justify his preventive detention, inspite of the fact that he is already under detention. There must be material for such compelling reasons and the material or compelling reasons must appear from the grounds of detention that will be communicated to the detenu, and, it is not necessary that in the order of detention such awareness of the detaining authority has to be indicated.

12. For the foregoing reasons, in my view the impugned order of detention (Annexure P-I) does not suffer from any legal infirmity and the same is not liable to be quashed. This petition is accordingly dismissed.