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**(1994) 12 P&H CK 0006**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Writ Petition No. 488 of 1994

Gurvinder Singh alias Toni

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Dec. 15, 1994

**Acts Referred:**

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Customs Act, 1962 - Section 108

**Citation:** (1995) 57 ECR 450 : (1995) 1 RCR(Criminal) 656

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

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

V.K. Jhanji, J.

The present petition under Article 226 of the Constitution of India read with Section 482 Cr. P.C. has been preferred by Gurvinder Singh @ Toni for quashing of detention order dated 3.6.1993, Annexure P-1, passed u/s 3(1) of the Conservation of Foreign, Exchange and Prevention of Smuggling Activities Act, 1974 (in short, the Act).

2. On 3.2.1992 at Raja Sansi Airport, passenger namely Manwinder Singh son of Santokh Singh was found having in his possession 3 pieces of gold, 20 Kgs. Almond and 21 packets of cigarettes. He failed to produce any evidence for the lawful importation/possession/acquisition of these items. In his statements dated 3.2.1992 and 5.2.1992 recorded u/s 108 of the Customs Act, he stated that his brother; Gurvinder Singh @ Toni, i.e. petitioner, who is running a travel agency in the name

and style of Preet Travel Agency situated in Landa Bazar, Amritsar has been financing him to bring goods from Kabul. The residential premises of the petitioner were searched on 4.2.1992, but nothing incriminating was recovered. Petitioner was asked to appear before the Customs Authorities, but instead of appearing, he obtained an anticipatory bail. It was only after he obtained the anticipatory bail, that he gave his statement u/s 108 of the Customs Act. In his statement, he denied having any links with his brother. The order of detention was passed on 3.6.1993, i.e. almost a year and four months after the date of pre-judicial activity. The order of detention has been sought to be quashed in this petition on the ground of delay in passing of the detention order, as also on the ground of delay in executing the same. It has been alleged in the petition that order of detention was executed on the petitioner on 12.6.1994, i.e. after a delay of nearly one year. During the course of arguments, on 2.11.1994, this Court found that there is no adequate explanation furnished by the detaining Authority as to why the detention order was not executed for nearly a year. Accordingly, Mr. Bhanto, DAG Punjab, was asked to file a supplementary affidavit in this regard on or before 2.12.1994. When the matter came up before me on 22.12.1994. Mr. Bhanot prayed for an adjournment and consequently, the case was adjourned to 12.12.1994. Today, when the matter has been taken up again, Mr. Bhanot has stated that in spite of his having requested the department to file the supplementary affidavit, no one has come forward for filing the supplementary affidavit so as to explain the delay in executing the order of detention. Though opportunity was given to the State Government to defend their action, but they have failed to do so despite the grant of repeated adjournments. Therefore, in absence of any explanation regarding delay in executing the order of detention, I have no alternative but to hold that the further detention of the petitioner is unconstitutional and the petition deserves to be allowed.

3. Accordingly, this petition shall stand allowed and the detention order dated 3.6.1993 is quashed. It is ordered that petitioner shall be set at liberty forthwith provided no other case is pending against him.