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(1987) 12 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 1224 of 1987

Surjit Singh	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: Dec. 18, 1987

Citation: (1988) 1 RCR(Criminal) 249

Hon'ble Judges: K.S.Bhalla, J

Advocate: Anil Malhotra, Renu Bala, B.S. Bindra, Advocates for appearing Parties

Judgement

K.S. Bhalla, J.

1. Petitioner Surjit Singh was detained pursuant to an order of detention issued by the State Government under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (For Short the Act) which according to the petition was dated 23.1.1987, but according to the reply filed on behalf of the State of Punjab was made on 22.1.1987. Copy of the order placed in the relevant file of the department, however, is dated 27.1.1987. In the given situation, I shall be referring to the same as detention order. The petitioner has impugned the said detention order through this writ petition and has claimed that the same be quashed mainly on three grounds viz; no copy of the detention order was supplied to him; that the same was not issued by a competent authority, having been signed by an Under Secretary of the State Government; and that there was no rational nexus between the incidents relied on and the subjective satisfaction arrived at as well as lack of proximity between said satisfaction and actual detention.

2. The first contention cannot hold good in view of Annexure R1, which shows that a copy of the detention order was received by detenu Surjit Singh. A receipt to that effect under his thumb impression is provided in form A therein. The learned counsel for the State has placed the relevant file before me and it contains the original of Exhibit R 1 with clear thumb impression of petitioner Surjit Singh. It is dated 12.6.1987 the admitted date of his detention under the detention order. It also contains certificate of Joginder Singh, DSP,

Patti with regard thereto.

3. As regards the second contention, the detention order having been issued by the State Government and not by any officer specially empowered by that Government for the purpose, the rank of the person who authenticated the order of the State Government being below the rank of a Secretary would not be of any consequence, so as to call for quashing of the order or to brand the same as invalid. An Under Secretary has been authorised under the rules of business to authenticate on behalf of the State Government. The mere fact, therefore, that the detention order was issued under the signatures of Under Secretary (Home), so far as it is in the name of the Government of Punjab, does not invalidate that order. In this connection Gurbaksh Singh v. State of Punjab, I.L.R. (1979), Punjab and Haryana 187 Vol. II, may be looked into with advantage. The detention order in the given premises, therefore, cannot be said to have been issued by an authority not competent to issue the same and said contention of the petitioner does not find favour with me.

4. However, there appears to be merit in the last contention of the petitioner and clearly it is a case of lack of proximity in time to provide a rational nexus between the incidents relied on, the satisfaction arrived at and actual detention by which alone the order stands executed so as to achieve the purpose of prevention of prejudicial activities for which purpose preventive detention has been directed under the Act. The grounds of detention are provided in Annexure P2 and the last incident as per grounds of detention, admittedly, took place on 14.5.1986. If the detention order was passed on 22.1.1987 or thereafter, obviously the same was made after more than eight months. The order of detention was served on the petitioner, as per admission in the written statement filed by way of an affidavit of Shri V.V. Chadha, Under Secretary, Government of Punjab Home Department, Chandigarh, the officer who authenticated the detention order on behalf of the State Government, on 12.6.1987, when he was in judicial custody. Thus the order of detention was served after about five months of passing of the detention order. No explanation whatsoever for the delay, which is responsible for breaking the proximity in time, is forthcoming. No doubt merits of the facts, to which reference has been made in the petition cannot be sifted by the Courts in such cases. When the Legislature has made only the objective satisfaction of the authority making the order of detention, it is not for the Court to question whether the grounds given in the order are sufficient or not for the subjective satisfaction of the authority. But the State was required to explain with regard to inordinate delay which can always create doubts with regard to the genuineness of the alleged subjective satisfaction. When the State is called upon to answer a rule issued on a petition in a writ of habeas corpus, it is the obligation of the State or the detaining authority for making its return to the rule in such a case to place all the relevant facts before the Court and if there is any delay in making the order of detention or in arresting the detenu which is prima facie unreasonable, the State must give reasons explaining the delay. The delay of more than eight months particularly when it remains unexplained shall have to be treated as unreasonable and is bound to prove fatal. In the case of Laxman

Khatik v. State of West Bengal, AIR 1974 SC 1264, it was held that delay of seven months or making an order for detention after the incidents which led to the making of that order, was fatal. In Sk. Serajul v. State of West Bengal, AIR 1975 SC 1517, it was held that when there is undue delay after the alleged incidents before order of detention was passed and again after the order of detention and before actual arrest of detenu, Court can doubt genuineness of the alleged subjective satisfaction of the detaining authority as to the necessity of detaining the detenu with a view to preventing him from acting in prejudicial manner.

5. In the instant case, no attempt has been made to explain delay in making the order after last incident. Perusal of the file has revealed that detention proposal was moved only on 21.11.1986 i.e. after more than six months of the last incident irrespective of the fact that Nishan Singh named in Annexure P2 was apprehended on that date and the authorities learnt about alleged prejudicial activities of the petitioner immediately thereafter. As regards delay after passing of the detention order, an attempt has been made in the written statement suggesting that the petitioner evaded arrest and had absconded. In this connection it is significant to note that petitioner was detained under the detention order only while he was in judicial custody. According to the petitioner he himself surrendered before the Magistrate in a case against him under the Opium Act and it was only after that the detention order was served upon him. Perhaps no attempt was made to arrest the petitioner before his surrender in Court. Had the petitioner absconded or was responsible for some such wilful conduct, provisions of sections 82 of 85 of the Code of Criminal Procedure, 1973 could have been resorted to against him in view of section 7 of the Act. Admittedly no such action was taken against the petitioner and no explanation whatsoever is forthcoming for the same. The suggestion that determined and serious efforts were being made to trace the petitioner and there was every likelihood of the petitioner being traced out, in my view cannot be treated as sound explanation. Letter dated 19.2.1987 in the relevant file addressed to Senior Superintendent of Police, Amritsar speaks with regard to action under Section 7(1)(a) and (b) of the Act. It is clearly mentioned therein that in case petitioner is still not traced or arrested then a report may be sent so that a case for action under Section 7(1)(a) and (b) of the Act may be initiated against him. Had the petitioner absconded as now suggested a report to that effect would have been sent by the Senior Superintendent of Police, Amritsar to the State Government and action under Section 7 of the Act was bound to have been reported to. The explanation now advanced with regard to delay in service of the detention order, therefore, dies of its own death and cannot be accepted.

6. Admittedly the preventive detention is essentially a precautionary measure and as such with the idea to prevent the nefarious activities of a person in future, it is to be resorted to expeditiously. The very fact that no step was taken for long time in passing the order and then executing the same is indicative of the conclusion that perhaps there was no subjective satisfaction on part of the detaining authority with regard to the genuineness of the case of detention. In order to justify an inference that a person is likely in future to act

in a prejudicial manner it is necessary to bear in mind that such past conduct or antecedents history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. Whenever there is delay in making a detention order the detaining authority should explain the delay with a view to show that there was proximity between prejudicial activity and the detention order. When it fails to explain the delay, result becomes obvious and as has been observed above it proves fatal against the detention order. Had the preventive detention been called for with a view to stop nefarious activities of the petitioner his actual detention would not have been delayed for thirteen months as admittedly he was detained only on 12.6.1987 after the last alleged activity was made on the night intervening 13th and 14th of May, 1986. The relevant file does not provide any sound explanation with regard to this inordinate delay and whatever little provided in the written statement, as discussed above, has been shown to be unacceptable. Again in the verification clause, it is clearly provided by Mr. Chadha that he had no personal knowledge about any of the facts. He has stated that the contents of the affidavit are true and correct to the best of his knowledge as per information derived from the official record. The official record, as discussed above, does not support the contention advanced by him and thus it goes without saying that the inordinate delay in this case remains unexplained.

7. I, accordingly, quash and set aside the order of detention and direct that the petitioner be set at liberty forthwith.

JUDGMENT accordingly.