
(1987) 12 P&H CK 0010

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 687 of 1987

Bikramjit Singh

APPELLANT

Vs

State of Punjab and
ors.

RESPONDENT

Date of Decision: Dec. 10, 1987

Citation: (1988) 1 RCR(Criminal) 203

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

Advocate: S.K. Bhatia, B.S. Guliani, Advocates for appearing Parties

Judgement

K.S. Bhalla, J.

1. Petitioner Bikramjit Singh was detained pursuant to an order of detention dated 2.3.1987 issued by the District Magistrate, Patiala who is respondent 2 herein under Section 3(2) of the National Security Act, 1980 (Annexure P.2). The detention is based on various incidents ranging from 23.12.1985 to 4.1.1986 with regard to which three different first information reports were registered under various provisions of law as mentioned in the impugned order. Petitioner, admittedly, was already confined in jail in connection with said first information reports and the latest of them all was recorded 14 months before the making of the detention order.

2. The order of detention discloses that the petitioner is likely to indulge in a manner prejudicial to the maintenance of public order. When admittedly he was already in jail, he could not have indulged in any such activities.

3. From the material placed before me I find, particularly on the basis of the written statements filed on behalf of the respondents, that petitioner was not named in any of the cases registered against him except one i.e. FIR No. 4 dated 3.1.1986 and that the petitioner was an undertrial prisoner at the time of detention order was made.

4. The one contention strongly pressed before me by the petitioner's counsel is that the detaining authority was not made aware at the time of detention order was made that the

detenu had moved applications for bail in the cases in which he was undertrial or that he was enlarged on bail. No doubt it is mentioned in the written statement that the petitioner is on bail in all the cases and that orders for his release on bail were already made in all cases except one at the time of passing of the order of detention on 2.3.1987, but the detention order does not indicate so. I have gone through the detention order carefully. There is absolutely no mention in the order about the facts when the petitioner was arrested; since when he was an undertrial and that any applications for bail were pending or allowed. This indicates total absence of application of mind on the part of the detaining authority while passing the order of detention.

5. The power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventing detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. If we refer to the detention order it nowhere indicates if there was any imminent possibility of the petitioner being released. It only mentions in a vague and general manner that the petitioner was likely to indulge in a manner prejudicial to the maintenance of public order in case released on bail or otherwise. The very fact that a passing remark with regard to possible release of the petitioner on bail is made, is strongly indicative of the fact that the detaining authority was not at all aware of petitioner's release on bail. In the absence of awareness of the facts necessitating preventive custody, the order of preventive detention cannot be justified.

6. If the petitioner is found disturbing law and order or misusing the bail granted to him the authorities would be at liberty to move the appropriate Court to get the bail orders cancelled. One does not know how the detaining authority would have acted if he was made aware of the above details.

7. For the foregoing reasons, I am not satisfied that this is a fit case to resort to preventive detention and the petitioner is entitled to succeed on the abovesaid short ground mentioned as first in his petition. In *Anant Sakhararam Raut v. State of Maharashtra and another*, 1988(1) R.C.R.(Criminal) 619 : AIR 1987 SC 137, in similar circumstances on the same solitary ground detention order under Section 3(2) of the National Security Act, 1980 was quashed. Thus the present case is covered by that recent and authoritative pronouncement of the Highest Court of this Republic.

8. I, therefore hold that there was clear nonapplication of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result, I quash the order of detention dated 2.3.1987 (Annexure P.2) and direct that the petitioner be released forthwith provided he is already ordered to be released on bail in various cases in which he is under trial with regard to which there is a clear admission in the written statements. The writ petition is allowed without any order

as to costs.