

(1988) 08 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 1264 of 1988

Partap Singh

APPELLANT

Vs

State of Punjab and
Another

RESPONDENT

Date of Decision: Aug. 31, 1988

Acts Referred:

- Arms Act, 1959 - Section 25
- Constitution of India, 1950 - Article 22(5)
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Customs Act, 1962 - Section 108
- National Security Act, 1980 - Section 14(2), 3(2)
- Passports Act, 1967 - Section 3
- Penal Code, 1860 (IPC) - Section 307, 34, 411, 414
- Terrorist and Disruptive Activities (Prevention) Act, 1985 - Section 3, 4

Citation: (1989) 1 ILR (P&H) 106

Hon'ble Judges: Ujagar Singh, J

Bench: Single Bench

Advocate: H.S. Mattewal and Sukhbir Singh, for the Appellant; S.S. Saron, A.A.G., for the Respondent

Judgement

Ujagar Singh, J.

The District Magistrate, Amritsar passed a detention order qua the Petitioner on September 21, 1987 u/s 3(2) read with Section 14(2) of National Security Act, 1980 (approved on September 25, 1987) and the same was confirmed on March 8, 1988,--vide Annexure P. 1. This order of detention was revoked;--vide order dated 29th April, 1988 and fresh order of detention was passed,--vide order dated April 29, 1988, Annexure P. 2. The grounds of detention dated April 29, 1988 are Annexure P. 3.

2. The Petitioner,--vide this petition has challenged his detention order dated April 29, 1988, Annexure P. 2 on the following grounds:

(i) that the Petitioner was arrested and later on detained under the National Security Act;

(ii) the Petitioner filed Criminal Writ Petition No. 1733 of 1988 which was dismissed on January 21, 1988 by this Court;

(iii) the Detaining Authority revoked the said detention order, on April 29, 1988 and passed the new order of detention on that very date and the same is Annexure P. 2 and the grounds of detention are Annexure P. 3;

(iv) in case the earlier detention order was to be revoked there was no idea to pass a new order of detention and this shows the non-application of mind on the part of the Detaining Authority;

(v) Case F.I.R. No. 131 dated 8th June, 1987 was registered against the Petitioner u/s 414 read with Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 and Section 25 Arms Act in Police Station, Lopoke. Another case F.I.R. No. 162 was registered on 4th July, 1987 u/s 307/411/414/34, Indian Penal Code and Section 25 of Arms Act, Section 3 Indian Passport Act and 3/4 T.D.A. (P.) Act. The Petitioner was arrested but was granted bail in the said. F.I.R. on 25th September, 1987. About this fact the Detaining Authority had no knowledge and, therefore, this fact was not considered;

(vi) the Petitioner was arrested on 28th July, 1987 and remained in police custody. Dilbag Singh, brother of the Petitioner gave telegrams to the Governor and to the Home Secretary, Punjab, Chandigarh, to the effect that the police had got thumb impression of the Petitioner on blank papers and implicated the Petitioner in false case. Copies of the documents have been annexed as Annexures P. 4 and P. 5. The Detaining Authority was not aware of this fact nor this fact was considered by the Detaining Authority;

(vii) Detention Order shows that the Petitioner had links with Mohkam Singh and Surat Singh Khalsa and both of whom had admitted that the Petitioner had indulged in prejudicial activities. In this connection, it is mentioned that detention order of Mohkam Singh was revoked on 25th March, 1988. Copy of this order is Annexure P. 6. Detention order of Surat Singh Khalsa was also revoked on 12th March, 1988. Copy of the order is Annexure P. 7. These facts were also very vital but were not considered by the Detaining Authority and it is alleged that the detention order qua the Petitioner has been passed mechanically;

(viii) the prejudicial activities are alleged to have taken place in July, 1987 and August, 1987, but the detention order was passed on April 29, 1988 and, therefore, there was no nexus between the two;

(ix) Mohkam Singh, Surat Singh Khalsa and Amardip alias Dimpi are said to have made confessional statements that the Petitioner had links with them. Copies of the alleged confessional statements of these persons were not supplied to the Petitioner and, therefore, the Petitioner was denied his right to make effective representation;

(x) ground of Petitioner having met Amardip in Pakistan when the latter was undergoing training there and the Petitioner had instigated for the murder of maximum members of the other community and for creation of Khalistan. This ground was quite vague inasmuch as the place, date and time of the meeting is not mentioned.

The detention order dated April 29, 1988 Annexure P. 2 mentions that the Petitioner was already in custody and has been taking steps to get himself released from custody as per information received from the reliable sources and there was every likelihood of his being released from custody and in the event of his release from custody he was likely to resume prejudicial activities in future and, therefore, there was compelling necessity to pass the detention order. The grounds of detention, Annexure P. 3 mention about information received by Shri Harjit Singh, S.I. Police Station, Lopoke that Balkar Singh etc. including the Petitioner are known smugglers and they smuggled goods from India to Pakistan and also supplied secret classified information to Pakistan authorities and all of them in return bring opium and arms from Pakistan and the same are distributed to the extremists in Punjab and also harbour extremists. Registration of F.I.R. No. 133. dated 8th June, 1987 and FIR No. 62. dated 4th July, 1987 are mentioned therein. Another case F.I.R. No. 151, dated 28th August, 1987 is said to have been registered against the Petitioner in Police Station E-Division, Amritsar and A.S.I. Dara Singh, Police Station, D-Division, interrogated Mohkam Singh and Surat Singh Khalsa find they admitted their links with the Petitioner and with one Gurnam Singh Gharia. Amardip Singh is said to have been arrested in case F.I.R. No. 132, dated 1st August, 1987 in Police Station, Civil Lines, Amritsar and the Petitioner alongwith said Amardip Singh is said to have chalked out a plan to liquidate Senior Police Officers. Amardip Singh was interrogated and he made confessional statement stating his links with the Petitioner.

3. In their reply, it is stated that earlier detention order confirmed on 8th March, 1988 was revoked on technical grounds and a fresh order was passed after arriving at the subjective satisfaction. It is reiterated that despite the above fact, the Detaining Authority had considered it to be a compelling necessity to order the detention of the Petitioner. In view of his representation, dated 13th October, 1987 that the Petitioner was already in custody in F.I.R. No. 131/87 and in spite of the fact that the Petitioner was released on bail, there was no information about this with the State Government before the said order of detention was passed. The Petitioner is said to have not produced any proof whether he was released on bail in

connection with the said two criminal cases. It is admitted that Mohkam Singh and Surat Singh Khalsa were detained,--vide detention orders which have later been revoked and they were released from custody but it is said that their release from custody was not relevant. So far as non-supply of copies of confessional statement is concerned, it is not denied. Rather it has been asserted that the supporting material which formed the basis of grounds of detention was supplied to the Petitioner against a proper receipt and the Petitioner could make an effective representation with the help of supporting material.

4. The grounds for challenging the detention order mentioned in the petition have been reiterated during arguments by counsel for the Petitioner. Counsel for the State has vehemently opposed the same.

5. I have heard the counsel for the parties and have also gone through the file. The learned Counsel for the Petitioner has laid stress that confessional statements of Mohkam Singh and Surat Singh Khalsa as also Amardip Singh alias Dimpi were not supplied to the Petitioner and therefore he was denied his right to make effective representation as required under Article 22(5) of the Constitution of India and this ground he has taken in para 10 of the petition. Reply thereto has been referred to by the learned Counsel and therefore it is almost admitted that copies of confessional statements were not supplied. During arguments also, the learned Assistant Advocate General, Punjab admitted that these copies were not supplied but the Petitioner was made aware of substance of those confessional statements and, therefore, there is no prem-judice to the Petitioner in taking an effective representation against the detention order and with the help of supporting material, an effective representation could be made. The learned Counsel for the Petitioner has referred to *Asha Devi v. K. Shivraj* AIR 1979 S.C. 447, wherein it was laid down that the Detaining Authority based its decision on the detenu's confessional statement made; earlier before the Customs Officers. These statements were subsequently retracted by the detenu at the first available opportunity while he was in judicial custody. The Detaining Authority before passing the detention order had to consider all these facts whether the confessional statements recorded earlier were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements was in nature of an after thought. It was held that admittedly the aforesaid vital facts which would have influenced the mind of the Detaining Authority one way or the other were neither placed before nor considered by the Detaining Authority and, therefore, non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the Detaining Authority was present and, therefore, the detention order was held to be invalid and illegal. He further referred to [Mohd. Zakir Vs. Delhi Administration and Others](#), wherein it has been laid down that it is the Constitutional mandate which requires the Detaining Authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective

representation immediately instead of waiting for the documents to be supplied with. It was further held that the question of demanding the documents was wholly irrelevant. This infirmity was held to be violative of the constitutional safeguard enshrined in Article 22(5) of the Constitution.

6. He also referred to Kamal Kishore Saint's case 1988 Cri. Appeals Reporter 5 where it has been specifically held that the detenus in that case were supplied only with the copy of the F.I.R. and also extract of charge Sheet but not the statements u/s 161 of the Code of Criminal Procedure. It was held in that case that there was non-supply of vital documents to the detenus to enable them to make an effective representation against the grounds of detention and as such their right to make an effective representation as contemplated under Article 22(5) of the Constitution of India has been infringed rendering the order of detention as illegal and bad.

7. The learned Assistant Advocate General, Punjab has referred me to [Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr](#), wherein detenu was not supplied with documents to which only casual reference was made but which were not relied upon by the Detaining Authority while making an order of detention and as such detenu was held not to have been prevented from making an effective representation and their Lordships of the Supreme Court considered those documents copies of which were not supplied and held that those documents cannot be said to be documents which were relied upon by the Detaining Authority in making the order of detention. He has further referred to [Asha Keshavrao Bhosale Vs. Union of India \(UOI\) and Another](#), wherein it was held that once satisfaction of the Detaining Authority was reached on certain evidence bonafide, Court will not interfere by testing adequacy of evidence relied upon. In that case contraband articles alleged to be worth more than 1/2 crore of rupees had been received on the sea-shore at the back of the Raj Bhavan of Bombay. Access to this place was only through the Raj Bhavan. Sabnis was an employee of the Raj Bhavan at the relevant time and the detenu had asked him to allow the truck to enter into the Raj Bhavan compound for the purpose of transporting the contraband articles. It was upto the Detaining Authority to accept the statement of Sabnis and to be satisfied that such statement provided the link between the detenu and the receipt of the contraband articles and the bundle of facts relating thereto. The material fact in that case was that the access to the place was only through the Raj Bhavan and reliance was placed on the statement of an employee of the Raj Bhavan and the Detaining Authority satisfied itself about a statement which was even otherwise most probable in view of the circumstances of that case. Another fact which was relied upon by the Detaining Authority was that it was alleged that there was contact between the detenu and one Yusuf Herro and the Detaining Authority referred to this contact as under:

Intelligence gathered reveals that the main person behind the said smuggling racket is one Yusuf Herro. Since he has figured in many big cases detected by the

Customs Department, his photograph was available with the Customs Department.

8. The grounds of detention then continue to allege that the detenu was in the company of this Yusuf Herro to 16th October, 1984 as stated by Sabnis in his statement on 22nd October, 1984."

9. It was argued that it was incumbent under these circumstances on the Detaining Authority to disclose the role of Yusuf Herro in the smuggling in hand, as well as, his involvement in other big cases. No privilege was claimed in respect of this material. Under the circumstances there has been a failure to comply with Article 22(5) of the Constitution of India and the Petitioner's constitutional rights have been violated.

10. In the return of the Special Secretary it has been stated:

... I say that it was not necessary to supply the copy of the intelligence report. I say that as a matter of fact, no independent intelligence report was ever placed before me and I have neither referred to nor relied upon the said report. I say that it is fact that the detenu was engaged in criminal activity with Yusuf Herro and was in his company, which fact his co-accused Sabnis has brought to light in his confessional statement dated 22nd October, 1984 recorded by the Customs u/s 108 of the Customs Act.

11. Their Lordships repelled the argument holding that on the facts we are, however, satisfied that adequate material had been disclosed and no prejudice appears to have been caused for want of further disclosure.

12. In the present case, it has been specifically mentioned in the grounds of detention, Annexure P. 3 that Bhai Mohkam Singh and Surat Singh Khalsa were arrested and during interrogation they admitted their links and contacts with ... the Petitioner. It is also mentioned that Amardip Singh during interrogation came out with a confession that he had links with the Petitioner and there was a meeting between them in Pakistan to liquidate members of the other community. It is specifically mentioned in these grounds that on account of the above said activities, the President of India was satisfied that the Petitioner should be detained with a view to preventing him from acting in the manner prejudicial to the maintenance of public order and security of State and as such an order has been passed for the detention of the Petitioner. This ground as given in Annexure P. 3 specifically relies upon the statements made by Mohkam Singh, Surat Singh Khalsa and Amardip Singh and it cannot be said that supply of these documents to the Petitioner was not necessary. I think these statements were material documents and their non-supply to the Petitioner is violative of the provisions of Article 22(5) of the Constitution of India and, therefore, renders the detention order as invalid and illegal. The facts of the authorities relied upon by the learned Assistant Advocate General, Punjab are distinguishable. Mere synopsis of confessional statements was not sufficient compliance.

13. The learned Counsel for the Petitioner further argued that the detention order passed against Mohkam Singh and Surat Singh Khalsa were revoked by the State Government and these, orders revoking their detention were most Relevant material and should have been placed before and considered by the Detaining Authority before passing the detention order. In reply to this averment in-the petition, the Respondents have submitted that release of Mokham Singh and Surat Singh was not relevant to the present writ Petitioner because the detention order was passed on other prejudicial activities indulged in by the Petitioner as enumerated in grounds No. 1 to 3 and 5 of the grounds of detention and even those prejudicial activities were sufficient to pass the detention order. I have again gone through the grounds and as already said that in ground No. 5 an averment indicates words on account of the above said activities which include grounds No. 1 to 3 and 5 of the grounds of detention. This indicates that the Detaining Authority formed its opinion on all the grounds together; Grounds No. 3 and 5 also relate to links of the Petitioner with said Amardip Singh. In my view, the detention order is liable to be held invalid and illegal on this ground also.

14. There is another argument on behalf of the Petitioner that grounds No. 1 and 2 relate to certain incidents and with regard thereto criminal, cases are pending. It is further claimed that the detenu moved for bail and he was bailed out in this case. This fact is not denied in this reply. Rather it is asserted that the Detaining Authority was not aware of the order of bail and reliance has been placed on the case of Anant Sakharam Raut v. Leena Anant Rant AIR 1987 S.C. 137 wherein it was specifically held that if the Detaining Authority is not made aware of the fact that detenu had moved applications for bail and he was enlarged on bail but the detention order was silent about those facts, this shows total absence of application of mind on the part of the Detaining Authority. The detention order in that case was held to be void on that ground. In case of Shrimati Shashi Aggarwal 1988 (1) S.V.L.R. 1, it was held that there must be material apparently disclosed to the Detaining Authority in each case that the person against whom an order, of preventive detention is being made was" already in custody and yet for compelling reasons preventive detention was necessary. It was further held that apprehension of the Detaining Authority that if the detenu was released on bail, he would again carry on his criminal activities is by itself not sufficient to detain a person under the National Security Act. It was further held that the possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu if enlarged on bail, would act prejudicially to the interest of public order. In that case ultimately it was held that there was no material made apparent on record that the detenu, if released on bail, was likely to commit activities prejudicial to the maintenance of public order. In the present case also there is a bald statement in the detention order that the Petitioner was already in custody and had been taking steps to get himself released from the custody as per information

received from the reliable sources and there was every likelihood of his being released from custody and in the event of his release from the custody, he was likely to resume prejudicial activities in future and there was thus compelling necessity to pass the detention order. The compelling necessity is not disclosed nor apparent on the file. In these circumstances also the detention order cannot be held to be valid.

15. It is also material that brother of the Petitioner sent telegrams on 13th August, 1987 to the Governor, Panjab, Chandigarh alleging that thumb-impressions of the Petitioner had been obtained on blank papers and there was an apprehension of the Petitioner being implicated in false cases. This type of telegram was also sent to the Home Secretary, Punjab, Chandigarh. It can be presumed that this telegram must have been brought to the notice of the Detaining Authority by the Home Secretary, Punjab, Chandigarh, long before passing the detention order. The subject matter of this telegram was not taken into consideration although it was a material which was relevant to be considered before passing the detention order.

16. In view of the above discussion, this petition is accepted and the detention order, Annexure P. 2 and the grounds of detention, Annexure P. 3 are quashed. Petitioner be released forthwith unless required in any other case.