

Shamsher Singh Vs State of Punjab and anr.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 31, 1988

Citation: (1989) 1 AICLR 266 : (1989) 1 RCR(Criminal) 322

Hon'ble Judges: Harbans Singh Rai, J

Advocate: Navkiran Singh, S.S. Kang, Advocates for appearing Parties

Judgement

Harbans Singh Rai, J.

1. Shamsher Singh son of Gurnam Singh, resident of Moond Khera, P.S. Sadar, Patiala (now confined in Central Jail, Patiala), has filed this

petition challenging the order of his detention passed by District, Magistrate, Patiala, on May 2, 1988. The petitioner has been ordered to be

detained by District Magistrate, Patiala, primarily on the ground that the petitioner is likely to indulge in activities prejudicial to the security of the

State and maintenance of public order as he has been released on bail in cases FIR. No. 46 dated May 22, 1987 under section 307/124A/34,

IPC and section 25/54/59, Arms Act, P.S. Kotwali, Nabha, and FIR No. 178, dated October 10, 1987, under section 25/54/59, Arms Act, P.S.

Sadar, Patiala, on July 15, 1987 and October 14, 1987 respectively and that with a view to prevent him from acting in any manner prejudicial to

the security of the State and maintenance of public order as well as from interfering with efforts of Government, in coping with the terrorist and

disruptive activities in future, it is necessary to detain him. The petitioner has alleged in his petition that the order has been passed without any

application of mind and mechanically and there are no legal grounds to detain him.

2. The District Magistrate, Patiala, while ordering the detention of the petitioner Annexure P/1 dated May 2, 1988, has mentioned the following

grounds which led to the detention of the petitioner:

(1) That on 22.5.1987 at about 9.00 p.m., a police party under supervision of S.I. HartejSingh, S.H.O., P.S. Kotwali, Nabha, was present near

Junior Public School, Nabha, on the road leading to village Maiss in connection with Nakabandi. A car came from the side of village Maiss at high

speed. It was given a signal of torch light to stop, but its driver did not stop the car. The driver of the car was challenged by the police party to

stop the car. The S.I. Hartej Singh fired two shots from his service revolver, constable Hari Chand 910 fired a shot in the air from his service rifle

and on this the driver brought the car to halt. Four persons came out from the said car and took positions and fired at the Police Party. S.I. Hartej

Singh directed Constable Mohinder Singh to fire from signal pistol to provide light. The said persons fired intermittently on the police force for

about 45 minutes. The S.I. Hartej Singh fired five more shots from his revolver, Constable Hari Chand fired (on more shots from his rifle,

Constable Brij Lal fired nine shots where at A. S. 1. Dev Raj consumed five cartridges. Over this, the mid persons surrendered before the police

while raising their hands and antiGovernment slogans. They were saying ""Khalistan Bana, Ke Rahenge, Bharat Sarkar Da Goli Da Zore Te Takhta

Ulta Ke Rahange and Rashtrapati go) Hindu Raj Noo Khatam Kar Diange"". You disclosed your identity as Sham sher Singh s/o Gurnam. Singh

r/o village Moond Khera, P.S. Sadar Patiala and your accomplices revealed their identity as Jasbir Singh @ Jassa s/o Harvel Singh village Attalan,

P S. Ghagga, Manjit Singh @ Shunti s/o Balak Singh r/o Mohalla Jattan Wala Chautra Patiala and Rajinder Singh, @ Raju son of Man Singh r/o

Mohalla Dhobi Ghat, Patiala. You were taken into custody and subjected to personal search.

As a result of your personal search a country made pistol mark .303 was recovered from your right ""dub"" and 19 live cartridges of the same

number were recovered from your right pocket. During the personal search of Jasbir @ Jassa, a .12 bore country made pistol was recovered from

his right ""dub"" and 8 live cartridges of .12 bore were recovered from front pocket of the shirt., Personal, search of Manjit Singh @ Shunti resulted

in the recovery of a 12 bore country made pistol from right dub"" of his part and 12 live cartridges of the same number from the right pocket of his

pant. As a result of personal search of Rajinder Singh @ Raju a .32 bore pistol was recovered and four cartridges left recovered from the right

pocket of his pant. The car was of mark `Fiat" and of white colour. On its search, a number plate bearing PAP 3636 was recovered. The arms,

ammunition, car, number plate and the empty cartridges were taken into possession vide two separate recovery memos which were attested by

A.S.I. Des Raj, A.S.I. Dev Raj and constable Hari Chand.

On the basis of the above, a case F.I.R. No. 46 dated 22.5.87 under section 307/124A, I.P.C. and 25/54/59 Arms Act, P.S. Kotwali, Nabha,

was registered against you and your accomplices and all of you were arrested on the spot.

(Based on F.I.R. No. 46 dated 22587 U/s 307/124A, I.P.C. and 25 Arms Act, P.S. Kotwali Nabha, two recovery memos, statement of A. S. 1.

Dev Raj and Constable Hari Chand).

(ii) That on 101087 at about 7.10 A.M. a police party consisting of A.S.I. Ajmer Singh and other police officials was present at Patiala Devigarh

road near village Khansian, under the supervision of Inspector Surjit Singh in connection with Nakabandi and checking of suspected

persons/vehicles. Four persons riding on two scooters came on Balbera road. A scooter bearing No. PJN9320, which was driven by one Jasbir

Singh was stopped by A. S. I. Ajmer Singh. You, riding on the pillion, revealed your identity as Shamsher Singh son of Gurnam Singh, resident of

village Moond Khera, P.S. Sadar, Patiala and your personal search was conducted by A. S. I Jagraj Singh as a result of which a .12 bore country

made pistol loaded with one cartridge was recovered from the right Dub"" of your pant. The pistol was unloaded. Your further search resulted in

the recovery of a .12 bore live cartridge from left pocket of your pant. Pistol and both the cartridges were taken into possession vide recovery

memo, which was attested by HC Tarlok Singh No. 704 and constable Gurpartap Singh No. 417.

On the basis of the above a case FIR No. 178, dated 10101987, under section 25/54/59, Arms Act, P.S. Sadar Patiala was registered against

you and you were arrested at the spot.

(Based on FIR No. 178 dated 101087 u/s 25/54/59 Arms Act, PS Sadar Patiala, recovery memo. of pistol and cartridges and statement of HC

Tarlok Singh and constable Gurpartap Singh.).

During your interrogation in the above said cases, you disclosed that you knew Manjit Singh @ Shunti since his college days while you were

students of Mahindera College Patiala. The other persons became your associates during your visits to office of AISSF in Gurdwara Dukh

Niwaran Sahib Patiala. You had a planning to kill Hindus, loot banks, petrol pumps and liquor vends etc. and to commit other heinous crime.

(Based on interrogation report of Shamsher Singh in case FIR No. 46/87 of P.S. Kotwali Nabha and FIR No. 178/87 PS Sadar Patiala).

(iii) That on 8288 between 3 PM to 4 AM, you, Balbir Singh @ Sweety s/o

Prahalad Singh, resident of Ghas Mandi Patiala and Baldev Singh slo Gobind Singh, resident of village Bothoi Kalan, held a secret meeting at your

residence in village Moond Khera. It was discussed in the meeting that the Central Government was not interested in the solution of Punjab

problem because by doing so the Congress rule in Punjab which it had obtained on the pretext of Governor"s rule,. would be lost. Government of

India had done so that it may be able to do everything in Punjab according to its own wishes. The Government was getting the Sikhs killed in the

fake police encounters and some of them have been put behind the bars by involving them in false cases. It is desecrating the religious places. It has

also put some of the Sikhs in Jodhpur jail for the last so many years without any cases against them. It becomes clear that notwithstanding the

promises made with the Sikhs at the time of Independence of the country, the Government has forgotten the sacrifices made by them for the

freedom of the Country. Now further excesses cannot be tolerated. You had been compelled by the Government to have a separate Sikh State so

that the fruit of the freedom may be enjoyed. You also discussed that it was a very difficult task for which a lot of money was required to purchase

arms and ammunition to eliminate high ranking officers of the Government as well as to push Hindus out of Punjab. Such a heavy amount cannot be

made available except by looting banks, landlords and multimillionaires because such a task cannot be completed through collection of funds.

(Based on secret special report No. 5556/Spl./Pt. dated 9288 of DSP/CIP Patiala).

2. On account of the above said activities and on being satisfied that it was necessary to prevent you from acting in any manner prejudicial to the

security of State and maintenance of public order as well as from interfering with the efforts of Government in coping with terrorist and disruptive

activities I have passed an order for your detention with a view to prevent you from acting in the above said manner in future since you has been

released on bail, in cases registered against you".

3. The learned counsel for the petitioner has asserted at the bar that the grounds of detention contain nothing more than what has been stated by

the SSP in his communication to the District Magistrate and he has stated that not even a word, comma or fullstop has been changed in any manner

and the grounds of detention are just a verbatim copy of what the SSP has written in his. communication to the District Magistrates.

4. I have gone through the record to satisfy myself whether the contention of the learned counsel for the petitioner is factually correct or not and as

to whether the Distt. Magistrate has only copied the grounds from the communication sent to him by SSP or has applied his mind independently.

The SSP Patiala in his communication dated 8.4.1988 to the District Magistrate, has stated that the petitioner is a desperate and dangerous person

and his being at large would be hazardous to the society. The letter written by SSP is reproduced below.

(i) On 22587 at about 9.00 PM., a Police Party under the supervision of S.I. Hartej Singh, SHO/PS Kotwali Nabha was present near Junior

Public School, Nabba, on the road leading to village Maiss in connection with Nakabandi. A car came from the side of village Maiss at high speed.

It was given a signal of torch light to star, but its driver did not stop the car. The driver of the car was challenged by the Police Party to stop the

game, but he failed to stop the car. Then S.I. Hartej Singh fired two shots from his service revolver, Constable Hari Chand No. 910 fired a shot in

the air from his service rifle and on this driver brought the car to halt. 4 persons came out, from the said car and took positions and fired at the

Police Party S. I. Hartej Singh directed Constable Mohinder Singh to fire from signal pistol to provide light. The said persons fired intermittently on

the Police force for about 45 minutes. Then S.I. Hartej Singh fired five more shots from his revolver, Constable Hari Chand fired ten more shots

from his rifle, Constable Brij Lal fired nine shots whereas ASI. Dev Raj consumed five cartridges. Over this, the said persons, surrendered before

the Police while raising their hands and antiGovernment slogans. They were saying, ""Khalistan Zindabad, Bharat SarkarMurdabad, Khalistan Bana

Ke Rahenge. Bharat Sarkar Da Goli De Zor Te Takhta Ulta Ke Rahenge, and Rashtrapati RajHindu Raj Noo Khatam Kar Diange."" One of them

disclosed his identity as Shamsher Singh s/o Gurnam Singh r/o village Moordkhera, P.S. Sadar Patiala and the remaining persons revealed their

identity as Jasbir Singh alias Jassa s/o Harvel Singh village Attala P.S. Ghagga, Manjit Singh alias Shunti s/o Balak Singh r/o Mohalla Jattanwala

Chountra Patiala and Rajinder Singh Raju s/o Man Singh r/o Mohalla Dhobi Ghat Patiala. They were taken into custody and subjected to personal

search.

As a result of personal search of Shamsher Singh, a country made pistol mark .303 was recovered from his right ""dub"" and 19 live cartridges of

the same number were recovered from his right pocket. During the personal search of Jasbir Singh alias Jassa a .12 bore country made pistol was

recovered from his right `dub" and right live cartridges of .12 bore wire recovered from front pocket of his shirt. Personal search of Manjit Singh

alias Shunti resulted in the recovery of a .12 bore country made pistol from eight `dub" of his pant and 12 live cartridges of the same number from

the right pocket of his Pant. As a result of personal search of Rajinder Singh alias Raju a .32 bore pistol was recovered and four live cartridges

were recovered from the right pocket of his Pant. The car was of mark Fiat and of white colour. On its search, a number plate bearing PAP3636

was recovered. The arms, ammunition, car, number plate and the empty cartridges were taken into possession vide two separate recovery memos,

which were attested by ASI Des Raj, ASI Dev Raj and Constable Hari Chand.

On the basis of the above, a case FIR No. 46 dated 2251987 u/s 307/120A IPC and 25/54/59 Arms Act P.S. Kotwali Nabha was registered

against the said persons and they were arrested on the spot.

(Based on FIR No. 46 dated 22587 u/s 307/120A IPC and 25 Arms Act P.S. Kotwali Nabha, two recovery, Memos, statement of ASI Des

Raj, ASI Dev Raj and Constable Hari Chand).

(ii) On 101087 at about 7. 10 A.M a Police Party Consisting of ASI Jagraj Singh, ASI Ajmer Singh and other Police officials was present at

Patiala Devigarh road near village Khansian under the supervision of Inspector Surjit Singh in connection with Nakabandi and checking of

suspected person/vehicles. Four person ridings on two scooters came on Balbera road. A scooter bearing No. PJN9320, which was driven by

one Jasbir Singh was stopped by ASI Ajmer Singh. The person riding on the pillion revealed his Identity as Shamsher Singh s/o Gurnam Singh r/o

village Moondkhera P.S. Sadar Patiala and his personal searchwas Conducted by AST Jagraj Singh; as a result of which a 12 bore country made

pistol loaded with one cartridge was recovered from the right dub of his pant. The pistol was unloaded. His further search resulted in the recovery

of a 12 bore live catridge from the left pocket of his pant. Pistol and both the cartridges were taken into possession vide recovery memo. which

was attested by HC Tarlok Singh No. 704 and Constable Gurpartap Singh No. 417.

On the basis of the above, a case FIR No. 178 dated 101097 u/s 25/54/59 Arms Act P.S. Sadar Patiala was registered against him and he was

arrested at the spot.

(Based on FIR No. 178 dated 101087 u/s 54/59 Arms Act P.S. Sadar Patiala, recovery memo. of pistol and cartridges and statements of HC

Tarlok Singh and Constable Gurpartap Singh).

During his interrogation in the abovesaid cases, Shamsher Singh disclosed that he knew Manjit Singh alias Shunti since his college days while they

were students of Mahindra College, Patiala. The other persons became his associates during his visits to office of AISSF (a Gurdwara

Dukhniwaran Sahib Patiala. They had a planing to kill Hindus, loot banks, petrol pumps and liquor vends etc. and to commit other heinous crimes.

(Based on interrogation reports of Shamsher Singh in cases FIR No 46/87 of P.S. Kotwali Nabha and FIR No. 178/87 of P.S. Sadar Patiala)

(iii) On 8.2.88 between 3 P.M. to 4 P.M. Shamsher Singh slo Gurnam Singh r/o village Moondkhera, Balbir Singh alias Sweety s/o Prahald

Singh r/o Ghas Mandi Patiala and Baldev Singh s/o Gobind Singh r/o village Bathoi Kalan held a secret meeting at the residence of said Shamsher

Singh in village Moondkhera. It was discussed in the meeting that the Central Government was not interested in the solution of Punjab problem

because by doing so the Congress rule in Punjab which it had obtained on the pretext of Governor's rule, would be lost. Government of India had

done so that it may be able to do everything in Punjab according to its, own wishes. The Government was getting the Sikhs killed in fake police

encounters and some of them have been put behind the bars by involving them in false case. It is desecrating the religious places. It has also put

some of the Sikhs in Jodhpur Jail for the last so many years without any cases against them. It becomes clear that notwithstanding the promises

made with, the Sikhs at the time of Independence of the country, the Government has forgotten the sacrifices made by them for the freedom of the

country. Now further excesses cannot be tolerated. They has been compelled by the Government to have a separate Sikh State so that the fruit of

the freedom may be enjoyed. They also discussed that it was a very difficult task for which a lot of money required, to purchase arms and

ammunition to eliminate high ranking officers of the Government as well as to push Hindu's out of Punjab. Such a heavy amount cannot be made

available except by letting banks landlords and multimillionaires because such a task cannot be completed through collection of funds.

(Based on secret Special Report No. 55/56/SPL/PT dated 9.2.1988 of DSP/CID Patiala.).

5. A comparison of the grounds of detention and the communication of the S.S.P. shows that the grounds of detention on which the detention has

been ordered are verbatim copy of the grounds supplied by S.S.P. In this situation, the Supreme Court In *Jai Singh and others v. State of Jammu*

and Kashmir, 1985(2) R.C.R.(Criminal) 39 : 1985 CrL J. 527 , observed as under :

First taking up the case of Jai Singh, the first petitioners before the us a perusal of the grounds of detention shows that it is a verbatim reproduction

of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly

be issued. At the top of the dossier, name is mentioned as Sardar Jai Singh, father's name it mentioned as Sardar Ram Singh and the address is

given as village Bharakh, Tehsil Reasi. Thereafter, it is recited ""The subject is an important member of "" Thereafter follow various allegations

against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words

the subject is"" into"" You Jai Singh, s/o Ram Singh, resident of village Bharakh, Tehsil Reasi"". Thereafter word for word ""he wherever it occurs

referring to Jai Singh in the dossier changed into ""you"" in the grounds of detention. We are afraid it is difficult to find greater proof of non

application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner.

6. These observations apply to, the facts of this case also. The, other ground taken by the learned counsel for the petitioner for challenging the

detention is that the District Magistrate has mentioned in grounds Nos (iii) that the petitioner had committed certain acts which were prejudicial to

the security of the State. A reading of the allegations mentioned in ground No. (iii) concededly shows that the allegations give rise to very serious

offences under Terrorists and Disruptive Activities (Prevention) Act, 1985. It is not clear why the District Magistrate, before passing the detention

order, did not care to know as to for what reasons the police had not registered any case against the petitioner on the basis of the facts specified in

ground No. (iii). The District Magistrate being in charge of law and order is expected to examine the working of the police and to be satisfied why

no action under the law was taken against the petitioner. In *Sadhu Roy v. The State of West Bengal*, 1975 CAR 134 the detenu was sought to be

prosecuted for various offences under the Railway Property (Unlawful Possession) Act No. 29 of 1966, but the said prosecutions were dropped

and on the same very day he was taken into custody under the Maintenance of Internal Security, Act, 1971. In this situation, the Supreme Court

observed as under

There are two Social implications of dropping prosecutions and resorting to substitutive detention which deserve to be remembered. Where a

grievous crime against the community has been committed, the culprit must be subjected to consign punishment so that the penal law may strike a

stern blow where it should. Detention is softer treatment than stringent sentence and there is no reason why a, dangerous criminal should get away

with it by enjoying an unfree but unpaid holiday. Secondly, if the man is innocent the process of the law should give him a fair chance and that

should not be scuttled by indiscriminate resort to easy but unreal orders of detention unbound by precise time. That is a negation of the correctional

humanism of our system and breeds bitterness, alienation and hostility within the cage.

7. In the present case, no case even was registered against the petitioner on the basis of facts mentioned in ground No. (iii). Had there been any

truth or, substance in those allegations, a case would have been registered against him. Justice I.S. Tiwana J., while dealing with this aspect of the

matter in *Gurdial Singh v. State of Punjab and others*, 1988(1) Recent C.R. 481, quashed the detention on this very ground. As far as the ground

that he has been granted bail in two cases, it is not indicated by the records anywhere that the District Magistrate ever tried to know or verify at to

at what stage those cases are and whether there is any chance or likelihood of the conviction of the petitioner in those cases.

8. Taking into consideration that the District Magistrate has not applied his mind but has acted mechanically in adopting the grounds supplied to

him by the SSP and has not cared to find out as to for what reason the police has not registered any case against the petitioner on the basis of

the facts specified in ground No. (iii) though these facts give rise to very serious offences under the Terrorist and Disruptive Activities (Prevention)

Act, 1985, and as to why the petitioner was not arrested in the said case. Further, the District Magistrate has not cared to find out as to at what

stage the cases in which the petitioner has been bailed out are or whether there is any evidence in support of those allegations or not. All these

circumstances show that it is a case of nonapplication of mind.

9. As the detention of the petitioner is ordered without application of mind, it is quashed and the petitioner is directed to be released forthwith, if

not wanted in any other case.

JUDGMENT accordingly.