

Har Jas Dev Singh

Vs

State of Punjab and Others

Writ Petition No. 93 of 1973

(V. R. Krishna Iyer, P. Jagmohan Reddy, H. R. Khanna JJ)

25.07.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The petitioner challenges the order of detention dated March 28, 1972 made under Section 3 of the Maintenance of Internal Security Act No. 26 of 1971 - hereinafter called "the Act". Initially he was arrested under the Official Secrets Act, 19 of 1923, and was remanded by the Magistrate on October 24, 1971. On November 19, 1971, the District Magistrate, Gurdaspur made an order of detention under Section 3 of the Act which was served on the petitioner while he was still in confinement under Section 3 of the Official Secrets Act. He was also served with the grounds of detention. The order of the District Magistrate, however, was not approved by the State Government and the petitioner was directed to be released in respect of his detention under the Act. The petitioner thereafter moved the Sessions Judge for bail and was directed on March 2, 1972 to be released on his executing a bail bond of Rs. 50,000/-. The bail bond furnished by him was accepted by the Sessions Court on March 14, 1972, on which date the petitioner was released from jail. On March 28, 1972, a fresh order of detention was passed by the District Magistrate, Gurdaspur, which order was approved by the State Government on April 4, 1972. It is alleged that from March 14, 1972 to February 12, 1973 the petitioner did not appear before the Court in spite of repeated directions and undertakings given by his counsel. His application for exemption from appearance was refused and thereafter on August 17, 1972 an application was made for taking action against him under Section 7 of the Act. On February 6, 1973 the detenu was declared a proclaimed offender. On March 12, 1973 he was arrested in Delhi and produced before a Delhi Magistrate who granted a transit remand for being produced before the Court at Batala and was accordingly produced before him on March 28, 1972, was served on him. Representations made by him were rejected by the Government on April 10, 1973, and finally on April 30, 1973, his detention was approved by the Advisory Board. The State Government confirmed the order of detention.

2. The contentions urged before us are better appreciated by a perusal of the grounds of detention. These are :

"1. That you, Harjasdev Singh s/o Ujagar Singh, Jat r/o village Talwara, p/s Srihargobindpur born on April 15, 1941 in village Talwara matriculated in 1962, joined military service on August 28, 1963 as Sepoy Clerk and later promoted as Havaldar Clerk in November....., 1968, are Indian National. In February, 1967 when you were transferred to 10th Infantry Division HQ at Sujampur and remained there till July, 1970. During this period, you, Harjasdev Singh have been collecting information regarding military units and conveying the same to Pak Intelligence

Services. In return, you were suitably rewarded by the Pakistan Officers and in support of this, the following facts have been duly proved against you :

(i) That during October, 1969, one Pritam Singh Jat r/o Baleem p/s Kalanaur allured you to indulge in espionage activities against India and give him Military Intelligence and secret documents for passing on the same to his Pak masters for which you would be paid handsomely. You felt tempted and gave your consent to do the job. Pritam Singh gave you Rs. 60/- and promised to come after a week. Pritam Singh again met you after about a week and you handed over to him a typed list of units under 10th Infantry Div. with their Locations. You were paid Rs. 100/- more by Pritam Singh for this job.

(ii) Again in the month of November, 1969, the above said Pritam Singh, contacted you at Sujampur and paid you Rs. 100/- as your remuneration for supplying the list of staff officers at 10th Infantry Division HQ at Sujampur and also one sketch on tracing paper regarding road routes from Pathankot to Akhnoor.

(iii) Again in the month of December, 1969, you supplied 10th Infantry Division Exercise papers to Pritam Singh who promised to compensate you for this after receiving payment from his Pak masters.

(iv) That in November, 1970, when you were posted in "A" branch HQ 67 Independent Infantry Brigade Company at Abohar, you were discharged from the Army due to your bad record.

2. That during May/June, 1971, Pritam Singh who was on one month leave from the 28th Battalion B. S. F. F. company met you at your house and took you to Shakargarh, District Sialkot (Pakistan) and produced you before Major Akhtar and Sub. Zafar. There you along with Pritam Singh crossed the border from the left side of Indian Picket Bohar Wadala onward by the side of Bhusai band and reached Pak picket Taphatpur, wherefrom you were taken to Pak Security Office, Shakargarh in a jeep by Sub. Zafar. There Major Akhtar and Sub. Zafar talked with you in seclusion. You gave out all the details of 10th Infantry Division to your knowledge to the Major. Your particulars were noted down on a printed form which was got signed by you and you were also got photographed. You passed on the following documents and Military Intelligence to the Pak Security Officers:

(i) Deploment statement of the units under 25 Division and other connected with units other than those under 25 Div.

(ii) There was no movement of the Army units in Dera Baba Nanak and Gurdaspur areas at that time.

The Major gave you Rs. 200/- as your remuneration and assigned you the following task :

(i) To collect information about the postings and trainings of the officers under 10 Infantry Division.

(ii) To collect any secret or top secret documents from any Army Officer.

(iii) To collect any pamphlet about the Army training or containing technical number of the Indian Army units.

Both you and Pritam Singh thereafter crossed over to India via the same route.

3. In the month of September, 1971, you alone crossed the Border via the same old route and met Major Akhtar and Sub. Zafar at Shakaragarh and furnished the following documents and Military information to them :

(i) Ammunition scale of the units under 10 Infantry Division.

(ii) One pamphlet about the technical numbers of the Army Divisions, Brigades and units of Indian Army.

(iii) About posting of Major General Jaswant Singh as 10 Infantry Division commander.

(iv) About movement of No. 10 Infantry Division HQ from its previous headquarter at Sujampur to the left side of the Dalhousie Road near Pathankot in the newly constructed barracks.

You were paid Rs. 200/- for this service and further allotted the following task :

(i) To collect information about the construction work of Railway line from Pathankot to Jammu via Kathua.

(ii) 1300 MM gun supplied by Russia was with which unit of the Indian Army and the location of that unit.

(iii) Location of 4 Horse units.

(iv) To collect Army new or old photo of any V. I. P. about his visit at 10 Infantry Division HQ or any unit under the Division.

You were then made to cross to India with a Pak national named Akhtar who was appointed a courier for collecting documents and military intelligence from you.

4. That you along with Akhtar reached Pathankot. Akhtar stayed there while you left for your village. After two days, you returned to Pathankot and gave Akhtar the following documents to be delivered to your Pak master :

(i) Three photos of Sh. Swaran Singh the then Defence Minister on V. I. P. visits in Akhnoor sector in 3 different poses with G. O. C. 10th Infantry Division.

(ii) Location statement of the units under 26 Infantry Division and connected units.

(iii) Two sketches on tracing papers of obstacle plan of Akhnoor Sector - Part I and Part II.

(iv) 4 Horse units moved from Patiala to Madhopur area.

5. That on October 23, 1971 you were arrested by the local police of p/s Srihargobindpur from your house in case F. I. R. No. 178 under Section 30 of the Act. On search of your house, the following documents in connection with your activities prejudicial to the security of the State were recovered :

(i) A list typed in English of officers ACRS to be reviewed by the Brigade Commander.

(ii) One white paper i. e., printed letter pad of Headquarter Ambala Sub-Area, Ambala Cantt. with formation sign of the Sub-Area units.

(iii) A rough sketch about the road from Batala - Dera Baba Nanak - Kalanaur towards village Pakiwan showing some villages prepared by you to go to and from Pakistan in connection with your espionage activities, incriminating documents, along with other papers.

6. That on interrogation you have been found to be a Pak spy.

7. That in case F. I. R. No. 178 referred to in para 5 above, you have been released on bail by the District and Sessions Judge, Gurdaspur and it is now likely that you will continue your spying activities for the Pakistan Intelligence services or by crossing over to Pakistan, you are likely to divulge intelligence collected by you about our National vital installations, Military formations and Civil Defence forces, to Pak authorities which would be highly prejudicial to the security of the State in these days of Pak hostilities."

3. It was first contended that as no return was filed by the State Government, the petitioner is entitled to be set at liberty under Rule 5 of Order XXXV of the Supreme Court Rules; secondly, there is no nexus between the object of the order of detention and the grounds of detention; thirdly, a perusal of the grounds of detention will disclose that order is really made under Section 3(1) (a) (i) of the Act and not under Section 3(1) (a) (ii) under which it is purported to be made, inasmuch as the acts alleged against the detenu would justify an order being made to prevent him from acting in any manner prejudicial to the Defence of India and cannot justify an order against him from acting in any manner prejudicial to the security of the State or the maintenance of public order. Finally, it was urged that since the grounds which formed the basis of the order of detention served on him on November 19, 1971 (hereinafter referred to as the first order) are identical with the grounds for detaining him under the impugned order is bad and his detention illegal.

4. Taking the last point first, it is not disputed, except for Ground No. 7, that the grounds of detention first served on the petitioner on November 19, 1971 are identical with the grounds on which the impugned order of detention is made. There is, however, another minor difference between the two orders in that though the grounds mentioned in both the orders set out that the petitioner has been detained under Section 3(1) (a) (ii) the grounds in the first order state that the detention of the petitioner was to prevent him from indulging in any manner prejudicial to the security of the State or maintenance of public order, while the grounds in the impugned order merely state that it was to prevent the petitioner from acting in any manner prejudicial to the security of the State only. The question is, whether these two variations from the first order can be construed as 'fresh facts' justifying the impugned detention within the meaning of Section 14(2) of the Act wherein it is provided :

"The revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an Officer, as the case may be, is satisfied that such an order should be made."

There is no doubt that since the first order of detention, dated November 19, 1971, was not approved by the State Government that order of detention ceased to have force after 12 days from the date of the order and that detention order had therefore expired on December 1, 1971. Even if the first order was revoked due to a technical defect the same result follows. In *Hadi Bandhu Das v. District Magistrate, Cuttack and Another*, it was urged on the analogous provisions of the Preventive Detention Act 4 of 1950 that a detaining authority may issue a fresh order after revocation of an earlier order of detention if the previous order was defective in point of form or had become unenforceable in consequence of a failure to comply with the statutory provisions of the Act. Negating this contention the Court observed at pp. 233-234 : "There is nothing in Section 13(2) which indicates that the expression 'revocation' means only revocation of an order which is otherwise valid and operative : apparently it includes cancellation of all orders - invalid as well as valid." In these circumstances after the date on which the order ceased to be in force, unless fresh facts had arisen on the basis of which the Central Government or a State Government or an officer, as the case may be, was satisfied that such an order should be made, the subsequent detention on the very same grounds would be invalid. This Court has in *Massod Alam etc. v. Union of India and Other*, has so held. In that case the detenu was arrested on June 15, 1972 pursuant to an order of detention, dated June 14, 1972 made by the District Magistrate under Section 3(1) (a) (i) and (ii) of the Act. The Government in that case also did not accord its approval for the petitioner's detention as required by Section 107/117 of the Code of Criminal Procedure. A fresh order of detention was again passed on the same day, namely June 25, 1972, the grounds of which were identical. Several contentions were urged before this Court, but that which found favour with it was that the earlier order of detention was either revoked or had expired with the result that unless the detention pursuant to the order, dated June 25, 1972 is passed on fresh facts arising after the expiry or revocation of the earlier order, it must be held to be invalid. In support of this conclusion, two decisions of this Court in *Hadi Bandhu Das v. District Magistrate, Cuttack* (supra) referred to earlier, and *Kshetra Gogoi v. State of Assam*, decided under Section 13(2) of the preventive detention Act (IV of 1950), which is identical with Section 14(2) of the Act were referred to.

5. The learned Advocate for the respondent-State has strenuous attempt to distinguish *Massood Alam's* case (supra) firstly, on the ground that since the petitioner was in jail at the time when the first order was served on him and revoked his subsequent release on bail by the District and Sessions Judge, Gurdaspur, constituted a fresh fact, as his release was likely to enable the petitioner to continue his spying activities for Pakistan Intelligence Service or to cross over to Pakistan for divulging the intelligence collected by him concerning vital installations, Military formations and Civil Defence Forces to Pakistan authorities which would be highly prejudicial to the security of the State. The argument of the petitioner's Advocate that fresh fact or facts must be such as would provide a nexus between the object of the order of detention and the grounds of detention, was sought to be controverted by the State on the ground that the Act made a difference between the grounds and facts which are two different connotations conveying different concepts. It was urged that while ground must have a nexus with the object of the order of detention, facts stated therein need not necessarily have that nexus. We find it difficult to accept this distinction. While it is true that in Section 8 of the Act as also in its other provisions grounds and facts are used in opposition to each other, they must be taken as referring to two different things. The grounds are conclusions of

fact or reasons which have induced the detaining authority to pass the order of detention. Some times these are referred to as basic facts. Facts, however, constitute the evidence upon which the conclusions justifying the detention are made. In *State of Bombay v. Atma Ram Sridhar Vaidya*, it was observed : "By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts. The conclusions drawn from the available facts will show in which of the three categories of prejudicial acts the suspected activity of the particular person is considered to fall. These conclusions are the "grounds" are they must be supplied. No part of such "grounds" can be held back nor can any more "grounds" be added thereto. What must be supplied are the "grounds on which the order has been made" and "nothing less". The detenu, however, is not entitled to know the evidence, nor the source of the information, but he must be furnished with sufficient particulars or facts i. e. sufficient details to enable him to make out a case if he can, for the consideration of the detaining authority. (Also see *Ram Krishan v. State of Delhi*.)

6. There may be facts which are not germane or are not relevant to the grounds justifying the detention and when Section 14 refers to fresh facts it does not refer to facts which are not relevant, but to such fresh facts on which the detaining authority is satisfied that an order of detention should be made. If the fresh facts cannot form the basis for a conclusion on which the detention order can be made, then those facts are not fresh facts which will justify the detaining authority to make an order of detention. If the contention of the learned Advocate for the State that the release on bail of the petitioner by the District and Sessions Judge constitutes fresh facts which would furnish an opportunity the detenu to act in a manner prejudicial to the security of the State or the maintenance of public order, then the same argument can be availed of for any subsequent detention on the same facts and grounds after the detenu has been released on the expiry of the period for which he was detained or after the earlier order of detention has been revoked, because in both the cases, namely, where the Government has refused to confirm the order of detention as well as on the expiry of the period for which the detenu has been detained and the detention order has expired, the likelihood of the detenu continuing to act in any manner prejudicial to the security of the State etc. can be said to exist and those would furnish a cause for making a fresh detention order. A fresh order of detention can only be made if fresh grounds come into existence, after the expiry or revocation on the earlier order of detention. No such fresh order could be made on the ground which existed prior to the revocation or expiry of the earlier order of detention. In order to prevent such a contingency Parliament has enacted Section 14 of the Act and this Court dealing with such a contingency in *Massod Alam's case* (supra) already referred to observed : "It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to the camouflage of making a fresh order operative soon after the expiry of the period of detention, as also to minimise resort to detention orders that Section 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made". We do not think that the release of the detenu on bail by the Sessions Court would constitute fresh facts as would justify the impugned detention order, nor is there any substance in the contention that since in the first order of detention the security of the State and the maintenance of public order were mentioned and in the second order merely the security of the State was mentioned, they can be considered as fresh facts. Both the detention orders are passed under Section 3(1) (a) (ii) which set out the prejudicial acts under which the suspected actions of the detenu will fall and for which the detention is made. It is immaterial whether the detaining authority is satisfied that the grounds on which the detention is being made for preventing the detenu from acting in a manner prejudicial to the security of the State. The variation in the enumeration of the prejudicial acts have nothing to do with fresh facts.

7. There being no fresh facts on which the impugned detention order is made, that order is invalid

and the detention of the petitioner cannot be sustained. In the view we have taken, it is not necessary to deal with the other contentions. The petitioner is directed to be released forthwith.

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