Giani Bakshish Singh

Vs

Government of India and Others

Criminal Appeal No. 116 of 1973

(H. R.Khanna, A. Alagiriswami JJ)

18.09.1973

JUDGMENT

ALAGIRISWAMI. -

1. This is an appeal against the judgment of the High Court of Punjab and Haryana dismissing the appellant's petition under Article 226 of the Constitution of India read with Section 491, Cr.P.C. for the issue of a writ in the nature of habeas corpus or any other appropriate writ, order or direction for his production before the Court and to be set at liberty. The appellant is a British citizen, employed in the Accounts Branch, Head Post Office, Birmingham and General Secretary of the United Kingdom Akali Dal. He came to India on November 6, 1972 to attend the Bhog ceremony of Sant Fateh Singh who died on October 30, 1972. He was arrested on November 16, 1972 in pursuance of an order for his detention under the provisions of sub-section (2) of Section 3 read with Section 3(1)(a)(i) and (ii) of the Maintenance of Internal Security Act, 1971. This order was approved by the State Government on November 27, 1972. The Advisory Board's report in respect of detention was made on January 4, 1973 and the State Government confirmed the order of detention on January 16, 1973. The grounds of detention were as follows :

> "(a) That you on November 11, 1972 held secret meeting in Gurdwara Rani Bazar Sharifpura, Amritsar at 7.00 p.m..... In the meeting you told them that the Sikhs could not get justice at the hands of Hindus in India. Therefore, it was necessary to secure Home Land for sikhs by resorting to the use of force as the Bania Government at the Centre could not accept the demand of Sikh Home Land by persuation or other peaceful means. You further assured them that there was no paucity of funds with U. K. Akali Dal and sufficient amount could be made available which could be spent in the achievement of Home Land on the lines suggested above. You also informed them that your organisation (U. K. Akali Dal) had made Rs. 50,000/- available in India for use for the achievement of the Home Land. You further told them that you could also be receiving sufficient money from your organisation in U. K. in the near future. You further exhorted them to organise the movement in a systematic manner, raising volunteers and setting offices at suitable places in Punjab. You further directed them to collect arms, explosives etc. for use for the achievement of the object at the proper time. You further instigated them to create hatred amongst Hindus and Sikhs and cause communal disturbances in Punjab. You also advised them to enlist large number of paid workers who could work as "suicide squads" at the proper time and till then their services could be used in doing propaganda in the villages for creating favourable atmosphere amongst the Sikh masses in support of the creation of Sikh Home Land.

(b) That you on November 12, 1973 again addressed a secret meeting in Gurdwara Rani Bazar, Sharifpura, Amritsar at 8.00 p.m. ..... In this meeting you instigated them that the Sikh community could not survive in India in the present Hindu Raj. Therefore, the Sikhs must secure separate Home Land by force so that they could live with honour and dignity. You further added that Sikhs could only prosper if separate Home Land for Sikhs is achieved. You further instigated them that they would have to make all sorts of efforts including use of arms and indulgence in violence in order to achieve the Home Land. You further exhorted them to enlist the services of young elements in the Sikhs who would work whole heartedly for the achievement of the Home Land and were prepared to make big sacrifices. You further informed them that your organisation (U. K. Akali Dal) would be prepared to provide them with any amount they would be requiring for organising the movement and for purchasing the arms, etc. You further suggested that they should create cells in the Sikh Units of Armed Forces of India and police for enlisting their sympathy and support which would be of great help for the creation of the Home Land. You also instigated them to create hatred amongst the Hindus and Sikhs in order to create tension and communal disturbances which would be help in achieving their object.

(c) That you again on November 14, 1972 addressed another meeting at Jullunder..... In this meeting you told the participants that if the Sikh Home Land was not achieved the Sikhs would be reduced to status of 'Ghasiaras' and they could not live an honorable life like a free citizen of India and further told them that the "Panth" created by sacrifices of great Gurus would be eliminated. You further instigated them that the Sikhs would have to make all sorts of sacrifices to achieve the Home Land for Sikhs. You also suggested to them that the active workers should propagate the ideology of Sikh Home Land amongst the Sikh masses particularly in youths and students. You further assured them that you would arrange funds for them from U. K. for the purchase of arms which could be used in the struggle for the Home Land. He also suggested that the Sikhs who go to U. K. should be asked to get arms licences in India and they would be provided arms in U. K. by him free of cost. They on return could make use of these arms in the struggle for the Home Land. You also instigated them to create tension amongst the Hindus and Sikhs and cause communal disturbances. You also suggested the participants that they should propagate in the Sikh masses that the Sikhs were being given step-motherly treatment in the matter of selection of services in the 'Bania' Government and to the Sikh agriculturists. All the participants assured you to work on the lines suggested by you."

To complete the narration of facts it is necessary to refer to the proceedings of the Punjab Legislative Assembly on March 7, 1973 in which the Chief Minister of Punjab replying to a representation for the release of the appellant from detention did not mention any of the grounds contained in the order of detention, but sought to justify it by saying that the petitioner was in Pakistan at Nankana Sahib at the time of Guru Nanak's Birthday in November 1971 alongwith a Pakistani official, that he had been photographed getting down from a Pakistani plane, and that he had made a statement to a newspaper the 'India was a prison house for Sikhs'. The petitioner had also alleged in his writ petition that when the Prime Minister of India visited England in 1971 the Sikh community residing in the U. K. of has staged a demonstration expressing its concern against the Government of India's interference in the management of Sikh Gurdwaras of Delhi State by taking over the management of the Gurdwaras and handing over the same to a Board nominated by

it from amongst its own henchmen, that the Prime Minister of India was annoyed and irritated on account of this demonstration and the petitioner being one of the foremost organisers of that demonstration incurred the displeasure of the Prime Minister's partymen and under their direction a false story has been concocted to harass him and to prevent him to return to England to join his service. Nothing was, however, said about this during the course of the arguments.

2. Mr. Garg did not seek to argue nor could he argue that any of the grounds given for the appellant's detention were vague or irrelevant. It is now settled law that preventive detention is not a punishment for the past activities of a person but is intended to prevent the person detained from indulging in future in activities which may produce the results mentioned in Section 3 of the Maintenance of Internal Security Act. It is also well settled that the Court will not go into the truth or otherwise of the facts alleged as grounds of detention. The sufficiency of the grounds for detention is not also a matter which the Court will go into. There can also be no doubt that the appellant's activities detailed in grounds (a) to (c) bring his case squarely within the ambit of sub-clauses (i) and (ii) of clause (a) of sub-section (1) of Section 3 of the Maintenance of Internal Security Act.

3. The argument, however, was advanced that in respect of a foreigner clause (a) of sub-section 3(1) should be read along with clause (b) of that sub-section, and if so read an order of detention in respect of a foreigner can only be made with a view to regulate his continued presence in India and to making arrangements for his expulsion from India. It was, therefore, urged that as the appellant had made arrangements for his departure to England on December 18, 1972, his detention for purposes other than that of regulating his presence in India or making arrangements for his expulsion from India was illegal. It was also urged that even at this stage the appellant is anxious to go to England and that hew would be satisfied if an order is made to take him under proper escort and put him on a plane leaving for England We are not impressed with this argument. The power of a State to deal with foreigners committing offences inside its territory is not in dispute. The power of a State to detain even a foreigner who is found inside its territory in order to prevent him from indulging in prejudicial activities inside its territory cannot also be questioned. Mr. Garg did not seek to question the power of Parliament to legislate with regard to that subject. But he contended, however, that the power of Parliament in respect of preventive detention is found in Entry 9 of List I, Schedule VII of the Constitution, and the power of the Parliament and the State Legislatures in Entry 3 of the concurrent list, that clause (b) of Section 3(1) of the Maintenance of Internal Security Act will not fall under either of those entries and that only clause (a) will fall within the ambit of that power and the power given by clause (b) can therefore be used only in aid of the power given by clause (a). We are unable to accept this contention either. Clause (a) and clause (b) deal with two different kinds of powers. Under clause (a) the power is given to the State to detain any person, including a foreigner for any of the purposes mentioned in that clause. Under clause (b) power is given to detain a foreigner either for regulating his continued presence in India or for making arrangements for his expulsion from India. It is within the competence of the detaining authority to exercise the power conferred on it under clause (a) or clause (b). In this case the order of detention is made under clause (a) and therefore clause (b) does not come into picture at all. We are not able to agree with the contention that clause (b) would be beyond the legislative competence of Parliament unless it is interpreted in the manner in which Mr. Garg wants it to be interpreted. It is well established that the various legislative entries should be interpreted in a broad manner and if any legislation could be brought within the ambit of any one or other of the legislative entries the validity of that legislation cannot be questioned. Entry 10, List I, Schedule VII : Foreign Affairs; all matters which bring the Union into relation with any foreign country, would certainly cover clause (b). We may also refer to the Foreigners Act, 1946 which confers much more stringent powers in

relation to a foreigner than clause (b). It has not been argued that those powers are not valid or that the Foreigners Act is not a valid piece of legislation. We may legitimately presume that the laws of various countries of the world confer similar powers on their respective Governments in relation to foreigners. In Hans Muller of Nurenburg v. Superintendent Presidency Jail, Calcutta and Others ((1955) 1 SCR 1284 : AIR 1955 SC 367 : 1955 SCJ 324 : 1955 Cri LJ 876.), this held that Section 3(1)(b) of the Preventive Detention Act, 1950, which is exactly similar to clause (b) of Section 3(1) of the Maintenance of Internal Security Act, as well as Section 3(2)(c) of the Foreigners Act, 1946, on which it is based are not ultra vires' of the Constitution. It was also held that Section 3(1)(b) of the Preventive Detention Act is reasonably related to the purpose of the Act, namely preventive detention, inasmuch as the right to expel a foreigner conferred by Section 3(2) of the Foreigners Act on the Central Government and the right to make arrangements for expulsion include the right to make arrangements for preventing any breach or evasion of the order; and the Preventive Detention Act confers the power to use the means of preventive detention as one of the methods of achieving this end. This decision does not mean that Section 3(1)(a) could not be used for the purposes for which it is plainly intended.

4. We are conscious that the whole question at issue in this case is not whether the appellant could be detained in order that he might be expelled but whether he could continue to be detained except for that purpose. In the face of the very clear provisions of Section 3(1)(a) we have no doubt on that point. Indeed the Parliament seems to have specifically contemplated the contingency and provided for it. It is not only in a case where a foreigner wants to continue in India that the power is available but even where in order to avoid preventive detention he offers to go out of the country. It was urged that to place such an interpretation of this provision would be contrary to Article 51 of the Constitution, that if at all possible the section should be so interpreted as not to conflict with the provisions of Article 51. We see no such contradiction if it is interpreted as we have done. Reliance was placed upon a statement in Starke's Introduction to International Law (7th Edn.) found at page 348 where it is stated that "Detention prior to expulsion should be avoided, unless the alien concerned refuses to leave the State or is likely to evade the authorities". Reference was also made to Oppenheim's International Law (7th Edn.) where at page 631 it is stated that "Just as a State is competent to refuse admission to an alien, so, in conformity with its territorial supremacy, it is competent to expel at any moment an alien who has been admitted into its territory". It was urged that that is the only power which a State has in dealing with an alien who had come to a country under a passport which, as was held by Lord Alverstone, C.J., in R. v. Brailsford ((1905) 2 KB 730.), is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries. It was, therefore, urged that to detain a foreigner who has come to the country with a passport would be a breach of international amity. It is obvious in this case that the appellant taking advantage of the fact that by race he is an Indian proposed to indulge in activities which are a danger to the integrity and security of this country. The first duty of a State is to survive. To do so it has got to deal with enemies both overt and convert whether they be inside the country or outside. The fact that the appellant if released would go to England and from there continue to indulge in activities prejudicial to the security and integrity of this country, is a relevant factor in determining whether he could be detained in this country when he is found in this country. It is not necessary for the purposes of this case to consider whether if the appellant had not come to this country at all and stayed in England and continued to indulge in activities prejudicial to the integrity and safety of this country a detention order could be passed against him and he could be brought to this country. Even persons, whether they are Indian citizens or foreigners, who have committed crimes in this country but have

escaped to another country could be brought back only if there are extradition arrangements with the country to which they have escaped and the offence is an extradition offence. We are aware that there is no law in this country providing for extradition of persons against whom this country would consider it necessary to pass an order for preventive detention. It is not to be assumed that his country will indulge in such a useless and pointless exercise. But that is quite different from saying that there cannot be a law in this country providing for such detention. But if such a person happens to come to this country we presume he can be detained. We do not accept the argument that a person like the appellant could be detained only if it is apprehended that if not detained he would indulge in prejudicial activities in this country and not if his activities are outside this country even though they may have a prejudicial effect on this country. Take the case of a person acting prejudicially to the security of a State in this country while residing in another State. We have no doubt that he can be detained by the former State. The same analogy applies to this case. International Law does not seem to deal with the case of nationals of one country acting in that country to the prejudice of the security and integrity of another country and whether anything could be done about them. To allow a person like the appellant to go back to England at his request in spite of the certainty that while in England he will continue to indulge in activities prejudicial to the security and integrity of this country would be like the action of some foolish people who take a rat caught in a trap in their house to the road and release it.

5. It was urged that only where the grounds of detention were based on facts which can be held to amount to an offence either in India or in a foreign country for which he could be punished could he be detained. We are not able to appreciate the import of this argument. As is well known, preventive detention is not a punishment for an offence. To accept the argument on behalf of the appellant would make the grounds given in Section 3(1) of the Maintenance of Internal Security Act meaningless. Take for instance action prejudicial to the relations of India with foreign powers. As far as we are aware, there is no law enabling anybody in India to be punished for acting in a manner prejudicial to the relation of India with foreign powers. It cannot however be argued that detention on that ground is not permissible. Take again the case of activities prejudicial to the Defence of India. For the present, of course, we have the Defence of India Act still in force. Let us assume a period when it was not in force, does it mean that a person acting in a manner prejudicial to the Defence of India cannot be detained even though there is no law dealing with that question. That is why the Preventive Detention Act, 1950, which was passed when there was no war and no emergency, provided for detention on the same grounds as in Maintenance of Internal Security Act. In the absence of a law dealing with that question, naturally enough the Courts will have to decide whether the activity for which a person is detained is on prejudicial to the Defence of India; so also an activity prejudicial to the security of India. Defence of a country or the security of a country is not a static concept. The days are gone by when one had to worry about the security of a country or its defence only during war time. A country has to be in a perpetual state of preparedness. Eternal vigilance is the price of liberty. So it is that the founding fathers with considerable wisdom and foresight provided for laws for preventive detention and the limitations thereon mentioned in Article 22 of the Constitution. Preventive detention is, of course, an anathema to champions of individual liberty. But times being what they are, the Constitution-makers in their wisdom have provided for it. It is not necessary to give further examples to show that prejudicial activities contemplated under Section 3(1) of the Maintenance of Internal Security Act are not necessarily activities prohibited or made punishable by a specific provision of law. The cases relied upon to support the contrary proposition should be confined to the facts of those cases.

6. The only other question that remains to be dealt with is the one that arises out of the statement of the Chief Minister of Punjab in the Legislative Assembly on March 7, 1973. The argument is that

the Chief Minister's reply shows that the appellant has been detained, and is continued to be detained, not for the reasons which were intimated to him in the form of grounds of detention but really for the reasons mentioned in the Assembly and the detention is therefore, bad. It is pertinent to remember in this context firstly that the order for the detention of the appellant was made by the District Magistrate of Amritsar. He could not have known of the activities of the appellant which the Chief Minister mentioned in the Assembly. Secondly, the approval by the Government of Punjab of appellant's detention was made on January 16, 1973. There is nothing to show that on that day the Government of Punjab knew of the matters which the Chief Minister brought up in the Legislative Assembly on March 7, 1973, and the detention was approved by the Government only for those reasons. We are not prepared to assume, as was urged on behalf of the appellant, that the three matters mentioned in the Chief Minister's speech should have come to the notice of the Indian High Commission as soon as they took place and that they should have alerted the Punjab Government at once. There is no warrant for such an assumption. Except that one of the activities is said to be in 1971, we do not even know about the dates of the others. Moreover, the Chief Minister's reply was in answer to the demand of the Akali Dal Party for the appellant's release. The grounds of appellant's detention must have been known to them. The Chief Minister should, therefore, have been giving them additional information which came to his knowledge subsequently. We are not, therefore prepared to assume that the grounds for approval of the appellant's detention were not the same grounds on which he was detained but some others, and therefore malice in law has been established.

7. Furthermore, by a Presidential order Articles 14, 19 and 22 of the Constitution have been suspended during the subsistence of the Proclamation of Emergency. This contention is based on decisions of this Court interpreting Article 22. They are, therefore, irrelevant in considering a petition under Section 491, Cr.P.C.

8. We see no merit in the points raised on behalf of the appellant. The appeal is dismissed.

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