

Piara Singh

Vs

State of Punjab

Writ Petition (Criminal) No. 30 of 1987

(CJI R. S. Pathak, H. H. Kania JJ)

13.10.1987

JUDGMENT

KANIA, J. -

1. This is a petition under Article 32 of the Constitution of India for a writ of habeas corpus or any appropriate writ or order quashing the order dated January 3, 1985 passed by the Special Secretary to the Government of Punjab for detention of the petitioner and praying for the release of the petitioner.
2. By our order dated May 8, 1987, we had held that the writ petition succeeds for the reasons, which we would give later. We had also set aside the order of detention and directed the petitioner to be released. We are now giving the reasons for the said order.
3. The facts necessary for disposal of the writ petition lie within a fairly narrow compass. The petitioner was detained on November 21, 1985 pursuant to an order of detention dated January 3, 1985 passed under sub-section (1) and (2) of Section 3 of the National Security Act, 1985 signed by the Special Secretary to the Government of Punjab setting out that the President of India in exercise of the powers conferred by sub-section (1) and (2) of Section 3 of the National Security Act, 1985 was pleased to order that the petitioner should be detained. The ground given in that order is that the petitioner is indulging in activities prejudicial to the defence of India and the security of the State. On April 17, 1985, the petitioner, when he was in jail, was served with an order passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (referred to hereinafter as COFEPOSA), dated April 17, 1985, directing his detention. The petitioner made representation against his order of detention under COFEPOSA. He was produced before the Advisory Board under that Act and pursuant to the recommendation of the Advisory Board, his detention under COFEPOSA was revoked. The petitioner was also produced before the same Board, being also the Advisory Board under the National Security Act. The petitioner did not make by representation against his detention under that Act as, according to him, he was confused and believed that his detention was only under COFEPOSA. It appears that the Advisory Board confirmed the order of his detention. On January 24, 1986, an order was passed by the Under Secretary to the Government of Punjab, Home Department setting out that the President of India in exercise of powers conferred on him under sub-section (1) of Section 12 read with Section 14-A(1), (2) (c) & (d) of the National Security, Act, 1980 (No. 65 of 1980) as amended confirmed the aforesaid order of detention and was pleased to order that the petitioner would continue to be detainer in the custody of the Inspector General of Prisons, Punjab for a period of two years from the date of his detention. The petitioner made a representation dated December 18, 1986 through his Advocate addressed to the President of India for revocation of his detention. On December 24, 1986

the petitioner made a representation to the Special Secretary to the Government of Punjab, Department of Home. Affairs and Justice, against his detention. In this representation the petitioner, inter alia, contended that his detention was invalid as vital facts and materials that should (sic would) have influenced the minds of the declaring authority and the detaining authority had not been placed before them. Both the representation made by the petitioner were rejected on February 26, 1987. According to the respondent, the representation made to the Special Secretary, Government of Punjab was received on January 14, 1987. But, according to the petitioner, it was received by the Special Secretary on December 30, 1986. In support of this contention the detenu has produced an acknowledgment slip along with a copy of his representation. We propose to proceed on the assumption that the representation was received by the Special Secretary on January 14, 1987 because, even on that assumption, the petitioner, in our opinion, must succeed in the petition.

4. In the petition the petitioner has challenged the order of detention passed against him under the National Security Act, on various grounds including the ground that Section 14-A of the National Security Act is void as violating the Constitution of India. We propose to dispose of the petition only on one ground, namely, that there was inordinate delay in consideration of the representation made by the petitioner to the Government of Punjab through Special Secretary; and hence we do not propose to discuss the other grounds urged by the petitioner. We may mention here that as far as representation made by the petitioner to the Central Government by his Advocate's letter addressed to the President of India is concerned, we do not propose to enter into any controversy regarding that representation as the Union of India has not been joined as a party to the petition. The contention of the petitioner, on the basis of which we propose to dispose of this petition, is that he made a re presentation to the Government of Punjab on December 18, 1986. That representation, as per admission of the Government of Punjab, was received on January 14, 1987, and there was undue delay in disposing of that representation which was rejected on February 26, 1987, as aforesaid. According to the petitioner there is no justification for this delay and on account of this delay the rights of the petitioner under Article 22(5) of the Constitution of India have been violated and the continued detention of the petitioner is not valid in law.

5. Coming to the affidavit filed by Shri V. V. Chandha, Under Secretary to the Government of Punjab, in this connection, we may point out that, apart from saying that the representation made by the petitioner as aforesaid, was received on January 14, 1987, no explanation whatever is given as to why it took over a month an ten days to consider and dispose of that representation. It has been repeatedly laid down that in a matter of detention, the representation made by the detenu should be disposed of with utmost expedition and failure to do so vitiates the order of detention, because it infringes the fundamental right given citizen under Article 22(5) of the Constitution of India. In support of his arguments, learned counsel for the petitioner drew our attention to the decision of this Court in *Salah Mohammed v. Union of India*, ((1980) 4 SCC 428 : 1980 SCC (Cri) 988), where a delay of 22 days in considering the representation of the detenu was held to be inordinate and unreasonable. It was held that this delay violated the rights of the petitioner under Article 22(5) of the Constitution of India and vitiated the detention order. In that case the detention order was under COFEPOSA and the detenu was arrested on January 21, 1980. On February 20, 1980 the detenu made a representation to the detaining authority through Superintendent of Jails. On February 25, 1980 he was produced before the Advisory Board. On March 10, 1980 his detention was confirmed by the State Government and on March 26, 1980 his representation was rejected by the State Government. In the affidavit filed by the respondent in that case it was contended that representation of the detenu made on February 20, 1980 was received in the Home Department on March 14, 1980. It has been pointed out by this Court in that case that : [SCC p. 429, SCC (Cri)p. 989, para 8]

Times out of number, this Court has emphasised that where the liberty of an individual is curtailed under a law of preventive detention, the representation, if any, made by him must be attended to, dealt with and considered with watchful care and reasonable promptitude lest the safeguards provided in Article 22(5) of the Constitution and statute concerned should be stultified and rendered meaningless.

It was held that the functionaries of the State were guilty of gross negligence in dealing with and disposing of the representation of the detenu. The delay of about 22 days during which time the representation of the detenu remained unattended in the Office of the Superintendent of Jails or Inspector General of Prisons was to be held as inordinate.

6. In *Harish Pahwa v. State of U. P. & Ors.* ((1981) 3 SCR 276 : (1981) 2 SCC 710 : 1981 SCC (Cri) 589 : 1981 Cri LJ 750) it has been pointed out by this Court that it does not look with equanimity upon delays in considering the representation of detenus. Where the liberty of a person is involved, it is the duty of the State to determine his representation with the utmost expedition and deal with it continuously until a final decision is taken and communicated to the detenu. In the case the representation of the detenu was received by the State Government on June 4, 1980. The detention was under COFEPOSA. Comments were called for from the customs authorities on June 6, 1980 and the comments were received on June 13, 1980. On June 17, 1980, the State Government referred the representation to its Law Department for its opinion which was furnished on June 19, 1980. The representation was rejected on June 24, 1980. The rejection was communicated to the jail authorities two days later. The writ petition filed by the petitioner was dismissed by the High Court. The aforesaid principles were reiterated by this Court on an appeal preferred by the detenu against the decision of the High Court. It was held in that case that there was no explanation given by the government as to why no action was taken on the representation of the detenu on June 4, 5 and 25, 1980 and what consideration was given by the government to it from June 13, 1980 to June 16, 1980. On that ground it was held that there was inordinate delay in considering the representation of the detenu and the detention become bad in law.

7. In the light of these decisions in the present case it must be held that the delay in dealing with the representation of the petitioner, which was admittedly received by the government on January 14, 1987 and rejected late as on February 26, 1987, must be considered as inordinate delay in dealing with the representation. No explanation is given in the counter-affidavit as to why the representation could not have been dealt with and disposed of earlier, and hence it must be held that the order of detention of the petitioners vitiated by reason of delay in dealing with his representation.

8. It was contended by the learned counsel for the respondent that the representation made by the detenu to the Special Secretary, Government of Punjab was invalid as the advocate who sent the representation had no authority to make that representation. It was submitted by him in the alternative that the delay in dealing with the representation was on account of the fact that it was made by a person who claimed to be the advocate of petitioner but whose authority was not checked. In our view neither of these contentions can be upheld. These contentions have not been taken up in the counter-affidavit and cannot be urged merely at the hearing of the petition. There is nothing in law which prevents a representation being made by an advocate on behalf of the detenu. If there was any difficulty on that ground, enquiries should have been made with the advocate as to what was his authority to represent the detenu, and no such enquiry has been made in the present case. Thus, in that present case, the fact that the representation was made by the advocate does not explain the delay in dealing with that representation and cannot constitute any explanation for the delay in dealing with it.

9. It was next sought to be contended by learned counsel for the respondent that the delay in dealing with the representation had caused no prejudice to the petitioner, because it admitted that he preferred a writ petition against his detention to the Punjab and Haryana High Court and that Writ petition was dismissed by the High Court. In our view this submission also cannot sustain order of detention. It is true that the writ petition preferred by the petitioner to the Punjab and Haryana High Court was dismissed, but we are informed that a special leave petition filed against decision is pending in this Court. Moreover at the time when the writ petition was dismissed, the petitioner had not made any representation to the State Government at all and hence the dismissal of his writ petition by the High Court cannot be regarded as any substitute for consideration of his representation by the State Government which, unlike the Court, might be entitled to go into the factual merits of the grounds forming the basis of detention order. In support of his contention, learned counsel for the respondent sought to rely on the decision of this Court in Smt. Asha Keshavrao Bhosale v. Union of India ((1985) 4 SCC 361 : 1985 SCC (Cri) 561) in which case it was held that the delay of about two months in disposal of the representation made by the petitioner on behalf of the detenu to the Chief Minister against his order of detention did not vitiate the order of detention. That case, however, is of no assistance to the respondent because it turns on its own facts. A detailed representative was made in that case by the Secretary, Kedh Taluka Maratha Seva Sangh which espoused the cause of the detenu and challenged the detention. That representation was received on November 29, 1984 in the Secretariat of the Chief Minister. It was forwarded to the Home Department on December 3, 1984 and disposed of expeditiously, namely, on December 12, 1984. The rejection of that representation was communicated on December 13, 1984. The High Court, which dismissed the petition of the detenu had considered the contents of both the representation and held that the representation made by the petitioner was the second one and based on the same grounds and delay in disposing of that representation did not prejudice the case of the detenu. That conclusion was confirmed by the Supreme Court. The facts in this case are nowhere comparable to the facts of that case, and hence the principles laid down in that case have no application to the case before us.

10. It was for the aforesaid reasons that the order setting aside the order of detention was passed by us as stated earlier.

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