

Sukhdev Raj Vs. District Magistrate and ors.

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Court : Punjab and Haryana

Decided On : Mar-30-1972

Reported in : 1973CriLJ1074

Judge : Gopal Singh, J.

Appellant : Sukhdev Raj

Respondent : District Magistrate and ors.

Judgement :

Gopal Singh, J.

1. This is writ petition, by Sukhdev Raj. It has been filed against the District Magistrate, Secretary to Government Punjab, Home Department and the Superintendent, Central Jail, Amritsar. The detenu is being detained in that Central Jail.

2. In ground (f) of the grounds of detention supplied to the detenu, it is stated' that on the night of November 21. 1971, Mohd. Aslam, Joginder Singh and Jogi of Gujranwala along with others met the detenu, Om Parkash, Sewa Singh and Sewa Katta at the tubewell of Sewa Katta near village Maqboolpura and asked the latter that they should facilitate commission of riots between Hindus and Sikhs and help for destruction of bridges, water reservoirs and electric sub-stations. It is stated in that ground that the detenu and his companions were also told by these Pakistani

infiltrators visiting India in the garb of Hindus and Sikhs that they would aid the detenu and his companions in the commission of acts of depredation. It is said at the end of the ground that the infiltrators were by them-to be provided with places of shelter.

3. It is urged on behalf of the detenu that on November 21, 1971, when-Pakistani nationals are said to have contacted the detenu, the detenu was in police custody and could not have contacted the Pakistani nationals. In para 10 of the petition, it is stated that the detenu had been taken in custody by the police on November 9, 1971 in a case registered against him under Sections 307, 326 and 324, Indian Penal Code and under Sections 25 and 27 of the Arms Act and that he was released on bail on December 3, 1971. It is asserted on behalf of the detenu that the detenu was in custody on November 21, 1971. It is further averred in that para that the detenu had been admitted on November 12, 1971 in V. J. Hospital, Amritsar for treatment and continued in that hospital up till November 23, 1971. The fact that the detenu remained in the hospital under treatment from November 12, 1971 to November 23, 1971 is supported by a certificate dated January 21, 1972 given by the Assistant Professor of Medicine working in that hospital. It is marked Annexure 'C' On behalf of the respondents, it is admitted that the detenu was taken in custody on November 18, 1971. It is, however, denied that he was taken in custody on November 9, 1971. It is also admitted that he was under treatment in V. J. Hospital, Amritsar on November 21, 1971. It is, however, added that as a result of collusion between the police guard and the detenu, the detenu gave a slip, disappeared from the hospital on November 21, 1971 and got the opportunity of contacting the Pakistani nationals on that date. The name of the police guard, who was present in the hospital on duty on that date has not been mentioned. It is admitted that the detenu was in custody before and after November 21, 1971. It is stated that the meeting between the detenu and the Pakistani nationals was held near village Maqboolpura.

It is very hard to swallow the suggestion given on behalf of the respondents that on account of collusion between the police guard and the detenu, the detenu disappeared from the hospital in a clandestine manner and still chose to come back to the hospital after having attained the purpose of contacting the Pakistani

nationals. This suggestion on the face of it appears to be highly improbable and is hard to accept as correct. Having admitted that the detenu was in custody after having been arrested in pursuance of the above referred to case registered against him and having also admitted that he was under treatment in the V. J. Hospital, the respondents have failed to establish that the detenu was not present in the hospital on the alleged date of the meeting and could contact the Pakistani nationals. The certificate referred to above has been given by the doctor, who was attending to the detenu that the detenu remained in the hospital from November 12, 1971 to November 23, 1971. Thus, the respondents have failed to make good the plea that although the detenu was in custody and had remained under treatment in the hospital before and after the relevant date of November 21, 1971, yet he was not present in the hospital and was present in the company of Pakistani nationals on that date.

On the basis of the material placed before me, I have no other alternative except to hold that the detenu could not have contacted Pakistani nationals on November 21, 1971 near village Maqboolpura. Thus, ground (f) does not appear to be true and correct. As given in ground (f), all the facts as to the detenu having contacted Pakistani nationals for acting in a manner prejudicial to the maintenance of public order have to be held not to be true and correct. If the facts given in ground No. (f) are not true and correct, it is very difficult to depend upon the correctness of other grounds. It is hard to gauge the extent of the effect which ground (f) in relation to other grounds produced upon the mind of the detaining authority in coming to the conclusion of the necessity of the detention. I have taken a similar view in Criminal Writ No. 18 of 1972, Dalbir Singh v. Punjab State, decided on 20-3-1972. In that case too, the question raised was whether the detenu in the case could be present along with his companions including the detenu in the instant case in the meeting on November 21, 1971, when that detenu along with others had been taken in custody before that date and remained in custody thereafter.

4. For the reasons recorded above, I allow the petition and direct that the detenu be forthwith set at liberty.