

Ram Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-21-1987

Reported in : 1987(2)WLN394

Judge : Shyam Sunder Byas and; Navin Chandra Sharma, JJ.

Appeal No. : D.B. Habeas Corpus Petition No. 500 of 1987

Appellant : Ram Singh

Respondent : State of Rajasthan

Judgement :

Shyam Sunder Byas, J.

1. In this petition under Article 226 of the Constitution, the petitioner challenges the validity of the order (Annexure 1) dated January 7, 1987 of the District Magistrate, Jaisalmer, by which his brother Kishan Singh has been detained under Section 3(2) of the National Security Act, 1980 (here in after to be referred to as 'the Act') in Central Jail, Jodhpur.

2. As per averments disclosed in the petition, the detenu Kishan Singh was arrested at Jaisalmer on January 6, 1987 and was thereafter lodged in the Central Jail, Jodhpur on 7th January 15, 1987, the detenu was communicated the grounds of his detention along with the documents Annexure-3 and Annexure-4. The

grounds communicated to him were that he was constantly visiting Pakistan in illegal manner for last four or five years, he was transmitting the secret information relating to the security of the Country to Pakistani agents and was indulging in spying and espionage activities which posed a threat to the security of the country. The documents supplied to the detenu are Annexure-3 and Annexure-4. Annexure-3 dated January 5, 1987 is the communication addressed to the District Magistrate by the Superintendent of Police, Jaisalmer and Annexure-4 dated October 17, 1984 is a report recorded by the Circle Officer of Police, Jaisalmer containing the fact that 47 bales of clothes were found buried in the sand dunes. It was further mentioned in Annexure-4 that the detenu and one Bhagiya were suspected to have smuggled these bales from Pakistan. The petitioner made representation to the State and his case was put before the Advisory Board constituted under the Act. The detention order was, however, approved by the State Government and the Advisory Board was of the opinion that there was sufficient cause for his detention.

3. In challenging the detention, the grounds urged before us by Mr. Purohit are:

(1) that the grounds furnished to the petitioner in support of the order of detention are wholly vague and laconic because for want of particulars. The essential facts, particulars and material, on which the subjective satisfaction is to be formed by the detaining authority, have not been disclosed in the grounds of detention (Annx. 2). Annexure-2 discloses only the conclusions arrived at by the detaining authority and not the facts, particulars and materials, on which subjective satisfaction is to be based Under Section 3(2), of the Act. This refrained the detenu to make an effective representation against his detention;

(2) the detention order was passed on extraneous consideration. One Mr. Anil Khanna was appointed as the Superintendent of Police when Mr. Lalit Panwar was posted as the District Magistrate, Jaisalmer. Mr. Anil Khanna won laurels for his action in putting an end to the borders smuggling activities. The District Magistrate wanted to win the same laurels for himself. As a result, the district-wide crack-down was launched and as many as thirty-five persons were netted and swooned in January, 1987 by the District Magistrate in order to achieve his object. The

detention of the detenu, thus, based on extraneous circumstances, is bad; and

(3) the grounds of detention were communicated to the detenu on January 16, 1987, that is, after more than five days of the day he was arrested and detained. No reasons were communicated by him for not furnishing the grounds of detention within five days.

This prevented him from making an effective representation against his illegal detention. The grounds now stated by the State for not communicating the reasons of his detention to the detenu within five days do not make out 'exceptional circumstances' under Section 8(1) of the Act.

4. We have heard Mr. Purohit learned Counsel for the detenu and the learned Additional Advocate General. As the petition can be conveniently disposed of on the last ground, that is, non-communication of the grounds of detention within five days, we need not address ourselves to, the first two grounds, we will confine ourselves only to ground No. 3.

5. The undisputed facts are that the detenu was arrested on January 7, 1987 by an order Annexure-1 passed by the District Magistrate, Jaisalmer. The grounds of detention (Annexure-2) along with documents Annexure-3 and Annexure-4 were furnished to him on January 16, 1987. The reasons, which were recorded by the District Magistrate for not communicating the grounds of detention to the detenu within five days, were not communicated to him along with Annexure-2 or at any time thereafter. Keeping this admitted position in view, the contentions of Mr. Purohit are (a) the reasons making out 'exceptional circumstances' for not communicating the grounds of detention to the detenu within five days must have been communicated to him along with the grounds of detention (Annex-2); (b) whether the delay occasioned beyond five days was on account of 'exceptional circumstances' is open to judicial review by this Court and this Court can examine whether there were 'exceptional circumstances' for not communicating the grounds of detention detenu within five days; and (c) the grounds urged by the State that there was huge rush of work due to the district-wide crack down on thirty-five persons on account of their smuggling and anti-national activities, do not make out 'exceptional circumstances' as contemplated in Section 8 of the Act.

Reliance in support of the contention was placed on *Bishwa Mohon Kumar Sinha v. State of Bihar* ILA 174 (53) Pat 884, *Bishwa Nath Prasad Keshri v. State of Bihar* ILA 1975 (54) Pat 72, *Ibrahim Ahmed Batti v. State of Gujarat* 1982(3) SCC 762, *Hemlal Bhandari v. State of Sikkim* : 1987 CriLJ718 and *Chinamall v. State of West Bengal* : 1973 CriLJ589 .

6. Before we take up the contention of Mr. Purohit, it would be useful to read the relevant provisions of the Constitution and Section 8 of the Act. Article 21 of the Constitution ensures a fundamental right of the life and personal liberty to a citizen. Article 22(1) and (2) lay down the provisions of protection against arrested and detention in certain cases. But this protection is not available to a citizen who is arrested or detained under any law providing for preventive detention. Clause (5) of Article 22 provides certain safeguards to a citizen arrested under the Preventive Detention Laws. Clause (5) reads as under:

Article 22(5)-When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

7. Section 8 of the National Security Act, 1980 and the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, which are identical, are restatements of the safe-guards provided in Clause (5) of Article 22 of the Constitution. Section 8 of the National Security Act, 1980 reads as under:

8. Grounds of order of detention to be disclosed to persons affected by the order-
(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

8. We shall, now, proceed to examine the contentions of Mr. Purohit at seriation.

9. Developing the first contention that the reasons making out exceptional circumstance for not communicating the grounds of detention to the detenu within five days were not communicated to him along with the grounds of detention (Annexure-2), it was argued that the non-communication of the reasons to the detenu has prevented him from making an effective representation against his detention. This failure on the part of the Detaining Authority, i.e. the District Magistrate, is unexcusable and the detenu should be freed. The contention of Mr. Purohit has considerable force and he is fully backed by the decision relied upon by him. In the case of Bishwa Mohan Kumar Sinha (*supra*), as early as in 1974, the learned Judges of Patna High Court, while construing the identical provisions of Section 8 of the Maintenance of Internal Security Act 1971, held that the reasons for the exceptional circumstances for not furnishing the grounds of detention to the detenu should be communicated to him if the grounds of detention could not be communicated within five days of the date of detention. The communication of the reasons for the delay occurring after five days in communicating the grounds of detention, is necessary so that he may make an effective representation. This view of the learned Judges was up-held by their Lordships of the Supreme Court in Ibrahim Ahmed Batti' s case (*supra*). It was observed:

In our view, therefore, a duty is to inform the detenu about the existence of exceptional circumstances and what they were for delay in supplying grounds of detention and/or documents and statements incorporated therein arises by necessary implication and flows from the right which is conferred upon the detenu to make representation against his detention. In the instant case, for instance if the alleged exceptional circumstances were communicated to the detenu at the time of the delayed supply of the concerned document and statements in Urdu language he could have satisfied the superior authority or the Advisory Board that the exceptional circumstances did not really obtain in the case and the delay had vitiated his detention. In other words, what he has done before the Court now, he could have done before the superior authority or the Advisory Board. For these reasons we approve of the view ultimately taken by the Patna High Court in the

two decisions cited above, particularly the decision in Bishwa Mohan Kumar Sinha's case, where both the aspects have been dealt with. In our view, therefore, the impugned failure in this case constitutes another breach of the safeguard contained in Article 22(5) read with Section 3(3) of the COFEPOSA and vitiates the continued detention of the petitioner.

10. Of course, their Lordships were dealing with a case of detention under the COFEPOSA. The provisions of Section 3(3) of the COFEPOSA are completely identical with the provisions of Section 8 of the Act and, therefore, the law laid down by their Lordships in Batti's case can be safely applied to a case under Section 8 of the Act.

11. The contention of the learned Additional Advocate General, however, is that Section 8 of the Act does not cast a duty on the Detaining Authority to communicate the grounds of delay to the detenu. He invited our attention to A.K. Roy's case (6) where in the requirements of Section 8(1) of the Act were laid down. In our opinion, Roy's case renders no help to the learned Additional Advocate General. The question whether reasons for delay beyond five days should or should not be communicated to the detenu, was not at all mooted before their Lordships and naturally, therefore, they were not called upon to decide this controversy. We may point out that a similar contention was raised in Batti's case before their Lordships and the contention was repelled in para 12 of the judgment.

12. Learned Additional Advocate General also placed reliance on the case of Union of India v. Tulsi Ram Patel (7), where in it was held while construing the provisions of Article 311 of the Constitution that where an authority dismisses or removes or reduces in a rank a civil servant by dispensing with holding an inquiry for reasons to be recorded in writing, the reasons for dispensing with the inquiry need not be communicated to the civil servant. This authority also renders no help to the learned Additional Advocate General because of the provisions contained in Clause (3) of Article 311 of the Constitution. Since the decision of the Authority for not holding an inquiry for reasons to be recorded is final and the ground of not holding the inquiry cannot be agitated by the civil servant in appeal or revision, it was held that reasons for not holding the inquiry need not be communicated. More

over, that was a case relating to the service of a civil servant and not that of the liberty of a citizen.

13. In the instant case, admittedly, the reasons as to why the grounds for detention were not communicated to the detenu within five days on account of some exceptional circumstances, though recorded in writing by the District Magistrate were not furnished or communicated to the detainee. In view of the law laid down in Batti's case the detainee is entitled to be released on this ground alone.

14. Combating the second plank of the arguments, it was urged by Mr. Purohit that the question whether there were exceptional circumstances for not communicating the grounds of detention to the detainee within 5 days, is open to judicial review by this Court & this court can examine whether there were exceptional circumstances which occasioned in delay after the expiry of five days. Mr. Purohit is right in his contention The ground of delay and the reasons recorded in writing under Section 8 of the Act making out a case of exceptional circumstances for delay, are justiciable and are open to judicial scrutiny. It was held so and the ground explaining the delay were examined in Batti's case (supra) in 1982 and recently in 1987 in Hemlal' s case (supra) by their Lordships of the Supreme Court. Mr. Joshi the learned Additional Advocate General did not dispute this aspect of the matter and conceded, and rightly in our opinion, that the reasons recorded in writing to make out a case of exceptional circumstances for explaining the delay, are open to judicial scrutiny by this Court.

15. The last question which now survives for consideration is: whether the grounds recorded in writing by the District Magistrate in an attempt to make out exceptional circumstances to explain the delay, should be taken as sufficient. In the reply filed by the State, vide para 'E' on page 32, the reasons to explain the delay on account of special circumstances are that owing to heavy volume of work involved in preparing the copies of the documents to serve on the detainees (who were thirty-five in number), the grounds of detention could not be served upto January 16, 1987. It was further stated in the same para of the reply that as many as thirty-five detainees were detained and observing the legal and procedural formalities was bound to take certain time and there was heavy volume of work for serving the

order of detention on each and every detenu within a time of five days, which was very short time for the Detaining Authority to serve the order of detention within five days and as such the time taken amounts to 'exceptional circumstances' and notings to this effect were made in the office file.

16. It is true that in the district-wide crack down, thirty-five persons were netted and swooped, but that hardly constitutes 'exceptional circumstances to explain the delay. Such a contention was raised in *Chinamall v. State of West Bengal* (supra). The State Government gave the explanation that there was sudden and abrupt increase in the volume of work and detention cases during the period under the M.I.S.A. owing to spate of anti-social activities by political extremists in the State at that time. This explanation was not accepted and it was held that the explanation was obviously vague and unsatisfactory and cannot, for that reason, be accepted. It was further held that there being no proper or acceptable explanation there was no alternative except to hold that there was undue delay in considering the petitioner's representation which rendered his detention invalid.

17. It is interesting to note that the reply was filed by the Sub-Divisional Officer, Jaisalmer on behalf of the respondents. The affidavits of the Sub-Divisional Officer were also filed. The District Magistrate Mr. Lalit K. Panwar, who passed the detention orders, also, filed his affidavit. He merely denied the personal allegations of malice made against him. He has not filed any affidavit in support of the reasons recorded by him for explaining the delay on account of heavy rush of work to make out the special circumstances under Section 8(1) of the Act.

18. We have examined the reasons of delay put forward by the State and we are not, at all, impressed by those reasons. Only two documents were supplied to the detenu along with the detention order Annexure-2 one of the documents, namely Annexure-3 is the report of the Superintendent of Police covering only half a page. The other document Annexure-4 is a report of the Circle Officer Police, Jaisalmer covering hardly half a page. It is really surprising that copies of these two documents could not be prepared within five days.

19. The expediency, with which the District Magistrate acted in passing the detention order on January 7, 1987 on the report (Annexure-3) of the

Superintendent of Police dated January 5, 1987 is no doubt, commendable. The same expediency should have been shown by him in following the provisions of Section 8(3) of the Act in communicating the grounds of detention to the detenu. But he failed to do so and this failure is fatal. We are not, at all impressed by the reasons furnished to explain the delay beyond five days.

20. The provisions relating to the detention of a citizen without trial is Draconian as it clips and trims his wings of personal liberty guaranteed to him under the Constitution. Such a provision, being Draconian, has to be strictly constructed and levers-invented to check its misuse should be freely applied where they are available. The framers of the Constitution, while granting these Draconian powers to the State in the shape of preventive detention laws under Article 22(2)(b), were keen to provide levers against its hasty and hurried use. It is why Clause (5) was inserted in Article 22 of the Constitution. The provision of Section 8(1) of the Act is a further step of the Parliament to safeguard the hasty and hurried use of the powers of preventive detention.

21. In the result, the petition is allowed and the impugned orders Annexure-1 dated January 1987 passed by District Magistrate, Jaisalmer are set aside. The continued detention of the detenu Kishan Singh, in the circumstances pointed out by us above, would be illegal. We, therefore, direct the respondents to release him forth with if not wanted in any other case.

22. At the fag-end of hearing, the learned Additional Advocate General made a request that two weeks' time may be allowed to file an appeal against our order and meanwhile the detenu be not released. A conditional order may be passed that in case the order to stay the operation of our judgment is not obtained within two weeks, the detenu shall be released. We are unable to accept the request of the learned Additional Advocate General. We have held that the detention of the detenu is wholly illegal. When the continued detention is wholly illegal, it will be improper to pass the conditional order as prayed by the learned Additional Advocate General. The request is disallowed.