

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: HC(W) No. 31/2010 c/w CMP Nos. 16/2010 & 18/2010

Date of decision: 22.02.2011

Darshan Singh Vs. State of J&K and others

Coram:

Hon'ble Mr. Justice Virender Singh, Judge

Appearing counsel:

For petitioner(s) : Mr. D. S. Saini, Advocate.

For respondent(s): Mr. Gagan Basotra, Addl. Advocate General.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | No |
| ii) | Whether to be reported in
Digest/Journal | : | Yes |
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Darshan Singh (hereinafter to be referred to as 'detenu' only) and is presently confined in Central Jail, Kot Bhalwal, Jammu on the strength of Detention Order No.45/PSA of 2010 dated 23.09.2010 slapped upon himself by respondent No.2 (District Magistrate, Jammu) has sought interim bail on medical grounds by placing on record a letter of Inspector General of Police (Prisons), J&K addressed to Deputy Secretary to Government, (Chief Minister's Secretariat) J&K informing that as per the opinion of the medical board, he (Darshan Singh) *is suffering from advance Cirrhosis with presence of jaundice, ascites with history of bleeding and encephalopathy and such like patients are always on edge and their overall survival is poor.* The said prayer is not acceded to. However, the main petition is taken on board for its disposal being Habeas Corpus petition, which otherwise is to be given priority. Mr. Basotra, learned Addl. Advocate General is also in possession of the entire record for the perusal of the Court.

Heard learned counsel for both the sides. Detention record produced by Mr. Basotra is also perused.

Grounds of detention, which are made the basis for passing of the impugned detention order, read thus:-

“ Whereas, the Senior Superintendent of Police, Jammu vide his letter No.31642-43 dated 17.08.2010 has submitted a dossier (copy enclosed) wherein, it has been reported that you, Darshan Singh S/o Ajit Singh alias Nazi R/o village Nari Tehsil R. S. Pura District Jammu are an incorrigible cross border activist having indulged in cross border smuggling repeatedly at the behest of Pak based Sikh militants. You had been arrested in 08 criminal cases and sent to JIC a number of times and were earlier detained under Public Safety Act. But despite actions taken under substantive Acts you did not mend your criminal ways. As latest as last year you had again indulged in cross border activities which had been proved in the investigation of case FIR No.01/2010 U/S 20 Unlawful Activities Act, 120-B/RPC, 3/25 A. Act 3/ 4 PSSA, 4/5 ESA P/S R. S. Pura.

Whereas, it has also been reported that on 13.07.1984, a Police party seized 500 ltrs. of Lahan from the fields of one Chain Singh at Nari which was kept in 05 barrels which was damaged on spot and some empty barrels and other material was also seized near Bhathi from the fields of Chain Singh and Ajit Singh alias Nazi some barrels also were seized from their houses and seized material was taken towards Police Station, but at the way you along with your father and other associates attacked on the Police party and started firing. A number of persons and your relatives were with you. The Police party escaped from there with great difficulty. On this, case FIR No. 245/1984 U/S 353/148/149/341/109/RPC 4/25 A.

Act was registered against you in Police Station, R. S. Pura (copy of FIR is enclosed).

Whereas, it has also been further reported that on 14.07.1984, you alongwith your associates attacked on one Lal Chand S/o Dhondu Ram Caste Sahni with swords, Tokas and Rifle. On this, case FIR No. 248/1984 U/S 148/149/452/RPC, 3/25 and 4/27 A. Act was registered against you in Police Station R. S. Pura (copy of FIR is enclosed).

Whereas, it has also been reported that on 04.02.1985, you and your associates attacked on one Lal Chand S/o Dhondu Ram R/o Kher with axes and Pistols but he managed to escape. On this, case FIR No.39/1985 U/S 307/148/149/RPC was registered against you in Police Station R. S. Pura (Copy of FIR is enclosed).

Whereas, it has also been further reported that on 04.07.1985 the case FIR No. 40/1985 U/S 457/342/323/RPC was registered against you in Police Station R. S. Pura and challenged in the court of JMFC R. S. Pura on 07.11.1985 against you and your associate.

Whereas, it has also been reported that on 11.05.1985, you and your associates attacked on one Hari Ram S/o Shankar Dass Caste Bhagat R/o Kher having Tokas and Rifles with you. You fired upon him and injured him. In instant case FIR No. 146/1985 U/S 307/148/149/RPC 3/25 A. Act was registered against you in Police Station R. S. Pura (copy of FIR is enclosed).

Whereas, it has also been further reported that on 03.01.1994, you were arrested by a Police party with a Desi Katta alongwith 05 rounds of 303 at Keer Pind pully. On this, case FIR No. 04/1994 U/S 3/25 A. Act stands registered against you in Police Station R. S. Pura (copy of FIR is enclosed).

Whereas, it has also been reported that you alongwith two associates were arrested by Naka party of 05 JAK Rifles at International border in R. S. Pura sector during the night of 06/07.02.1991 while you crossed over the border from Pakistan. You fired upon the Army personnel at the Naka. You along with your 02 associates were arrested and Arms/ Ammunition was recovered from your possession. Accordingly, a case FIR No.37/1991 U/S 3/ 4 TADA was registered against you in Police Station R. S. Pura (copy of FIR is enclosed).

Whereas, it has also been further reported that on 08.04.1994, you along with your associate attacked on one Krishan Lal S/o Inder Ram R/o Nari with swords and revolve. On this, case FIR No. 89/1994 U/S 147/148/307/149/341/325/RPC, 3/25 A. Act was registered against you in Police Station R. S. Pura (copy of FIR is enclose).

Whereas, it has been further reported that during course of investigation in case FIR No. 01/2010 U/S 4/5 ESA, $\frac{3}{4}$ PSSA, 3/25 A. Act, 120-B/RPC, 20 Unlawful Activity Act P/S R. S. Pura (copy of FIR enclosed) and the interrogation of co accused namely Satnam Singh alias Tiny S/o Prab Dayal R/o Kapoorpur Tehsil R. S. Pura (2) Parvesh Kumar S/o Behari Lal R/o Kapoorpur reveals that you had motivated the above said 02 accused and had been instrumental in retrieving at least 02 consignments from Indo-Pak border in R.S. Pura sector. The consignment consisting of Pistols, RDX, fake currency , Genuine Indian currency, 02 Pak sim cards has been retrieved and distributed among antinational elements/ anti social elements. The character of the contraband reveals that the same is being utilized in antinational activities.

Whereas, in view of the above mentioned facts, circumstances consideration as well as your activities,

it is evident that you are continuously indulging in criminal activities of cross border smuggling of arms and ammunition, explosive substances, contraband material being utilized in antinational activities. Since, the action taken against you under the substantive laws have proved futile in deterring you from indulging in continuous criminal acts. You were earlier detained under Public Safety Act, but you had failed to mend your criminal activities. Thus, your remaining at large is constant threat to the security of the State and involves great risk to the nation. As such, in order to prevent you from further indulging in such activities, which are highly prejudicial and detrimental to the security of the State, it has become necessary to detain you under preventive measure. Therefore, you Darshan Singh S/o Ajit Singh alias Nazi R/o village Nari, Tehsil R. S. Pura, District Jammu, are hereby ordered to be detained under the provisions of J&K Public Safety Act, 1978.”

Mr. Saini submits that the impugned Detention Order sans application of mind and has been passed in a mechanical manner without appreciating the entire facts. According to him, the detenu was arrested on 25.09.2010 from his residence, detained and then put in the jail. He was shifted to Government Medical College on 27.09.2010 for medical treatment of his acute liver problem, where he remained admitted for about two weeks. With this ailment the detenu could not involve himself in the activity as projected in F.I.R. No.01/2010. He then submits that although respondent No.3 had furnished the detenu the material (photo-stat copy of the F.I.R.s relating to previous years) in the jail, but was not supplied with the complete material of the present case (F.I.R. No. 01 of 2010) and,

therefore, deprived him of making an effective representation to the Government guaranteed under Article 22(5) of the Constitution of India. Thus, a valuable right has been snatched from him.

May be the detention order is sought to be quashed on other pleas also taken in the main petition, but Mr. Saini has mainly laid stress on the aforesaid two grounds.

He lastly submits that the detenu is on his death bed as is clear from letter of IGP (Prisons) referred to hereinabove and that aspect may also be considered sympathetically.

Per contra, Mr. Basotra submits that the petitioner is detained on the basis of a very serious allegations against him as he is one, who is instigating others to indulge in criminal activities across the border by smuggling arms and ammunition. Mr. Basotra further submits that in F.I.R. No. 01 of 2010 registered at Police Station R. S. Pura under Section 4/5 ESA, 3/4 PSSA, 3/25 Arms Act, 120-B RPC and 20 of Unlawful Activities Act, two persons namely Satnam Singh alias Tiny and Parvesh Kumar (both residents of Kapoorpur Tehsil R. S. Pura) were arrested and interrogated and, during interrogation they disclosed that Darshan Singh (detenu) was instrumental in getting the consignment of arms and ammunition from Indo-Pak border. After his name was disclosed by those two persons, District Magistrate Jammu, in order to prevent further any such like activities which could prove prejudicial and detrimental to the security of the State, thought of detaining the detenu under J&K Public Safety Act, 1978. He goes on to submit that it was the subjective satisfaction of the District Magistrate, which

should not normally be made the subject matter of review by this Court except under exceptional circumstances.

Learned State counsel further submits that Satnam Singh and Parvesh Kumar are not only arrested in the aforesaid F.I.R. for substantive offences, but have also been detained under Public Safety Act by District Magistrate, Jammu and their petitions are also pending in this Court. The present detenu was not arrested in the aforesaid F.I.R. as he was not keeping good health and has been detained through the present detention order only, that too as a preventive measure.

No doubt, if one looks at the allegations only, prima facie, they appear to be quite serious in nature. But when the entire case is tested on the touchstone of reasoning and from other legal aspects also, the detention order deserves to be quashed. I would now delve deep into reasoning.

Perusal of major portion of the grounds of detention reflects the involvement of detenu in different case for substantive offences start from July, 1984 and ending April, 1994. The flashback of the cases is for ten years. In all these cases, the detenu has either earned acquittal or is on bail, as is stated by Mr. Saini and admitted by Mr. Basotra. However, one fact is very clear that he was not in custody in any of the cases mentioned hereinabove when the detention order was slapped upon him in October, 2010. So from all these facts, it can be comfortably said that the live link of any of the activities attributable to the detenu prejudicial to the security of the State is snapped as admittedly for long sixteen years, the State had no material against him at all. This all is borne out from the

dossier itself and the State cannot get out of it. It is only in January, 2010 that the detenu is shown to be active once again by indulging into all the nefarious activities detrimental to the security of the State compelling for his detention under Public Safety Act. This does not stand the test of reasoning.

Let us examine the present case, yet from another angle. Admittedly, the detenu is not arrested in the aforesaid F.I.R. No. 01 of 2010 and other two persons namely Satnam Singh and Parvesh Kumar were arrested. Case of the State is that during interrogation, they revealed that the consignment consisting certain arms and ammunition including some fake currency, came to their possession through the detenu. The words used are that 'he was instrumental in retrieving two consignments'. It can not be read against Darshan Singh-detenu as he has not shown to be the co-accused of aforesaid Satnam Singh and Parvesh Kumar. Even if he would have been arrested in the foresaid case on the basis of the said piece of evidence, still it could not be legally read against him being a statement of accused against co-accused. In the grounds of detention, it is said that on interrogation of aforesaid two co-accused, they revealed that the detenu had motivated them for that consignment. In that eventuality, the prosecution could arrest him with the aid of Section 120-B RPC, which is otherwise inserted in the F.I.R., but that is not the position. The explanation given by Mr. Basotra is that he was not arrested on account of his bad health as he is suffering from liver and kidney disorder, does not appeal to the Court at all being without any basis. If he could be arrested/detained under Public

Safety Act, it is not understandable, why he could not be arrested in the aforesaid F.I.R. for substantive offences. Sympathy has no place in such type of cases. In any case, the aforesaid material collected by the State does not lead anywhere, when tested on legal anvil. It appears that the District Magistrate, without applying his mind to the entirety of facts and circumstances, has just put his seal on the dossier placed before him. It is not expected of a detaining authority. A heavy duty is cast upon District Magistrate to peruse the entire record before arriving at subjective satisfaction. This exercise is not a sheer formality, which is to be carried out in a casual manner. After all, liberty of an individual guaranteed under Constitution of India is going to be curtailed by an order of detention.

I am conscious of the settled legal position that normally this Court should not sit as a Court of Appeal to minutely rescan the entire process on the basis of which District Magistrate has arrived at the conclusion on the basis of his subjective satisfaction. But that does not mean that even if the detention order speaks volumes of non-application of mind, still the Court would not show its indulgence and sit like a silent spectator. Undoubtedly, if the detention order is inherently weak and lacks application of mind, it would certainly fall into the scope of judicial review to hold it unsustainable. The present case, in my view, is of that type only.

Let us now advert to another vital aspect with regard to non-supply of relevant material to the detenu enabling him to make an effective representation. So far as supplying of material with regard to earlier F.I.R.s, the case set up by the detenu

himself is that it was supplied to him in the jail. That by itself, would not absolve the detaining authority of its responsibility. In fact, the starting point is registration of F.I.R. No. 01 of 2010, in which his involvement is shown after aforesaid two persons (Satnam Singh and Parvesh Kumar) were interrogated. So the entire material including their statements recorded during investigation, should have been supplied to the detenu so as to enable him to make an effective representation to put forth his case in his defence. Admittedly, the relevant material to case F.I.R. No.01/2010 has not been supplied to him. This exercise is again not a sheer formality and it has its far reaching effect. Representation means a meaningful representation as it can turn out to be a good ground for revoking or rescinding the detention order at any stage under Section 19 of the Act. The representation, if made, is always subject to consideration by Advisory Board as provided in Section 15 of the Act. Therefore, it has its effect depending upon the facts of a particular case. Detention order has to pass through different stages before it is confirmed for a particular period. Therefore, non-supply of the relevant material to the detenu will not only cause prejudice to him, he is also deprived of his constitutional right and that by itself can be a good ground for quashing the detention order. The present case is suffering from this vital flaw also.

I would like to make it clear that although Mr. Saini has made an attempt to seek relief of quashment projecting that the detenu is on his death bed on account of chronic ailments, but that aspect can not be considered on merits. However, on the strength of two vital weaknesses discussed hereinabove, in my

considered view, the detention order impugned herein cannot sustain in the eye of law and as such, deserves to be quashed.

It is made clear that whatever is expressed herein shall not be construed as expression of opinion in other two Habeas Corpus petitions filed by aforesaid Satnam Singh and Parvesh Kumar as the case at hand has been decided on its own individual merits.

The net result is that the petition at hand is allowed. The Detention Order No.45/PSA of 2010 dated 23.09.2010 is hereby quashed. Person of Darshan Singh S/o Late Sh. Ajeet Singh R/o Village Nari, Tehsil R. S. Pura, District Jammu, is ordered to be set free forthwith, if not required in any other case. Registrar Judicial to take immediate steps in this regard by informing the authority concerned.

Detention record retained be returned to Mr. Basotra forthwith by the Registry against proper receipt.

(Virender Singh)
Judge

JAMMU
22.02.2011
Narinder