

HARNEK SINGH

v.

STATE OF PUNJAB & ORS.

December 9, 1981

[A.D. KOSHAL, A.P. SEN AND V. BALAKRISHNA
ERADI, JJ.]

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, S. 3(1)—Detention Order—Offences committed by detenu in February 1980—Prosecution initiated under Penal Code—Detenu on bail and appearing before Magistrate from February 1980 to July 1981—Detenu taken into custody only in July 1981—Detention assailed in Court—Detention whether illegal and invalid.

The brother of the petitioner had been detained under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974. In the writ petition to this Court under Article 32 it was contended that a case covering offences under Sections 307, 411 and 414 of the Indian Penal Code was registered against the detenu, that those offences were the only acts which formed the basis of the detention order and that there is consequently no nexus between the unlawful activity attributed to the detenu and his incarceration.

Allowing the writ petition,

HELD : 1. The detention takes the character of punitive rather than preventive action, and is therefore vitiated. [141 A]

2. No reason has been put forward for the detenu not being taken into custody in pursuance of detention order right from January 2, 1981 till July 10, 1981 although he appeared in Court on all the days of hearing fixed by the Magistrate during that period. [140 H; 141 A]

3. The offences which are said to have been committed by the detenu as far back as February 27, 1980 could hardly form a ground for his detention on a date as late as July 10, 1981, the gap between the two being about a year and a half. No explanation has been furnished by the State as to why action under the Act was not taken at the earliest possible after the alleged commission of the offences which are the foundation of the grounds for detention. [140 F-G]

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 7444 of 1981.

A

(Under article 32 of the Constitution of India)

Hajinder Singh for the Petitioner.

O.P. Sharma M.S. Dhillon and R.N. Poddar for the Respondent.

B

The Judgment of the Court was delivered by :

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KOSHAL J. In this petition under Art. 32 of the Constitution of India seeking the issuance of a writ of habeas corpus, the prayer made by the petitioner is that his brother, Narinder Singh, who has been detained in pursuance of an order dated 4th November, 1980 passed under sub-sec. (1) of sec. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 be released from custody. The main ground urged in support of the petition is that there is no nexus between the unlawful activities attributed to the detenu and his incarceration. That ground we do not find to be without substance. A case covering offences under sections 307, 411 and 414 of the Indian Penal Code, amongst others, was registered against the detenu at Police Station Lopoke in Amritsar district on 27th February, 1980 and those offences are the only acts which form the basis of the impugned order. Those acts are also the subject-matter of a prosecution launched against the detenu, proceedings in relation to which have been going on in the Court of an Amritsar Magistrate. During those proceedings the detenu was on bail and was appearing in court on every hearing right from January 2, 1981 till he was put behind the bars on 10th July, 1981 in pursuance of the impugned order. We are clearly of the opinion that offences which are said to have been committed by the detenu as far back as 27th February, 1980 could hardly form a ground for his detention on a date as late as 10th July, 1981, the gap between the two being well-nigh a year and a half. No explanation at all has been furnished on behalf of the State as to why action under the Act was not taken at the earliest possible after the alleged commission of the offences which are the foundation of the grounds for detention. In our opinion, the charge is so stale in relation to the detention as not to have any real connection with it. It is further noteworthy that no reason is put forward for the detenu not being taken in custody in pursuance of the impugned order (for which the detaining authority was moved in the first instance by the Senior Superintendent of Police, Amritsar)

right from January 2, 1981 till July 10, 1981 although he appeared in Court on all the dates of hearing fixed by the Magistrate during that period. In these circumstances the detention takes the character of punitive rather than preventive action and is therefore vitiated. Accordingly we strike down the impugned order and direct that the detenu be released from custody forthwith.

A**B**

N.V.K.

Petition allowed.