

MRS. GEETINDER KAUR
v.
STATE OF PUNJAB AND 2 ORS.

JULY 23, 1985

[R.S. PATHAK AND SABYASACHI MUKHARJI JJ.]

National Security (Rajasthan Conditions of Detention) Order, 1984, Condition No. (iv) - Solitary Confinement of detenu - Validity of.

Preventive detention - Detenu - Facilities of - Detenu whether entitled to be detained in home State - Place of detention - Administrative choice of detaining authority - Interference by Court - When arises.

The wife of the detenu in her petition under Article 32 contended that the detention of the detenu in preventive custody in Bharatpur in the State of Rajasthan may be located in the State of Punjab or at a place not far off, that the detenu should be provided with appropriate amenities and facilities, that he should not be kept in solitary confinement, and should be allowed interviews with his relatives, friends and legal adviser from time to time.

On the question whether the detenu should be detained in the State of Punjab, his home State,

Held: 1. The place of detention is a matter for the administrative choice of the detaining authority, and a Court would be justified in interfering with that decision only if it was in violation of any specific provision of the law or was vitiated by arbitrary considerations and malafides. In the instant case, no such material has been placed before the Court. On the contrary, the counter-affidavits indicate that on the facts and circumstances of the case it was necessary to effect the detention at Bharatpur. The city of Bharatpur although situated in the State of Rajasthan, is not very distant from the State of Punjab and Haryana. The reasons for detaining the detenu at Bharatpur do not, therefore, permit interference in the matter of place of detention. [327 D-F]

2. While ordinarily a detenu should be detained in an environment natural to him in point of climate, language, food

A and other incidents of living, in the actual decision concerning the place of detention these considerations must yield to factors related to, and necessitated by, the need for placing him in preventive detention. [327 B-C]

B 3. While the conditions imposed upon a detenu held in preventive detention must not be punitive, they must nevertheless be such as to secure the effectiveness of his incarceration. [327 C-D]

C 4. The Jail authorities will continue to ensure that the detenu is supplied with all such facilities and amenities as are reasonably and necessarily required by him, consistently of course with the need to maintain the security of his detention. [328 C-D]

D 5. Condition No. 4 (ii) of the National Security (Rajasthan Conditions of Detention) Order, 1984 empowers the authorities to keep the detenu separate from ordinary prisoners. The nature of the detenu's detention does not call for interference. [328 G-H]

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 391 of 1985.

(Under Article 32 of the Constitution of India.)

E Hardev Singh and R.S. Sodhi for the Petitioner.

Bhagwant Singh Sindhu, Advocate, General, Punjab and S.K. Bagga with him for the Respondent No. 1 and B.D. Sharma for the Respondent Nos. 2 and 3.

F The Judgment of the Court was delivered by

G PATHAK, J. The petitioner, who is the wife of Simranjit Singh Mann, a detenu detained in the District Jail, Bharatpur, has filed this Writ Petition praying that the detention of the detenu in preventive custody may be located in the State of Punjab or at a place not far off, that the detenu should be provided with appropriate amenities and facilities, that he should not be kept in solitary confinement, and should be allowed interviews with his relatives and friends and his legal adviser from time to time. It is further prayed that certain provisions of the National Security (Rajasthan Conditions of Detention) Order, 1984 be declared ultra vires.

H The petitioner is represented by Mr. Hardev Singh, the State of Punjab by its Advocate Genral and the State of Rajasthan

by Shri B.D.Sharma. We have heard them at length on this petition. At the outset, it may be stated that Mr. Hardev Singh did not question the validity of the provisions of the National Security (Rajasthan Condition of Detention) Order, 1984. We propose to consider only those points on which submissions were made by him.

Mr. Hardev Singh contends that the detenu should have been detained in preventive custody in the State of Punjab, which is his home State, or in any event at a place not far off from that State. We have given the matter careful thought. While it is ordinarily desirable that a detenu should be detained in an environment natural to him in point of climate, language, food and other incidents of living, in the actual decision concerning the place of detention these considerations must yield to factors related to, and necessitated by, the need for placing him in preventive detention. While we maintain that the conditions imposed upon a detenu held in preventive detention must not be punitive, they must nevertheless be such as to secure the effectiveness of his incarceration. The respondents have given reasons for detaining the detenu at Bharatpur, and we are not persuaded that the law allows us to interfere in the matter. The place of detention is a matter for the administrative choice of the detaining authority, and a court would be justified in interfering with that decision only if it was in violation of any specific provision of the law or was vitiated by arbitrary considerations and mala fides. No such material has been placed before us. On the contrary, the affidavits filed by the respondents on the record indicate that the mind has been applied to the facts and circumstances of the case and that it was felt necessary to effect the detention at Bharatppur. It may be observed that the city of Bharatpur, although situated in the State of Rajasthan, is not very distant from the States of Punjab and Haryana. In the circumstances, we find ourselves unable to grant the relief sought by Mr. Hardev Singh in respect of the place of detention.

The next contention of learned counsel for the petitioner is that the detenu should be provided with various amenities and facilities necessary for a proper and decent human existence, and among them are mentioned good food, furniture and proper lighting, the supply of linen including pillows, bed-sheets and a mosquito net, adequate medical attention, as well as recreational amenities such as a radio. It is also prayed that the petitioner should be entitled to have his religious symbols near him to enable him to observe his religious practices. A counter-

- A affidavit filed by Mr. K.P. Upadhyay, who was Superintendent of the District Jail at Bharatpur upto May 23, 1985 has enumerated on oath that the detenu has been provided all the necessary amenities and facilities. He has specifically mentioned that a suitable diet, recommended by the doctor on duty, is being supplied to the detenu, and that the detenu is allowed to supplement the food at his cost or by food supplied by his family.
- B Besides, it is averred, the detenu has been allowed religious books appropriate to his faith as well as books on philosophy, history and fiction. It is also asserted that newspapers are supplied to the detenu. The learned Advocate General for the State of Punjab has stated before us that he will have no objection to any further necessary and desirable amenities and facilities being provided to the detenu, and that a transistor radio could also be made available to the detenu. On the question of
- C medical attention for the detenu, it appears that he is a patient of high blood pressure, and it is affirmed that adequate medical attention by medical experts as well as appropriate medicines have been made available to him. We have no doubt that the Jail authorities will continue to ensure that the detenu is supplied with all such facilities and amenities as are reasonably and necessarily required by him, consistently of course with the need to maintain the security of his detention.
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- On the question of the detenu being allowed interviews with his lawyer, and his parents, wife and family as well as other relatives, the learned Advocate General has assured us that the State of Punjab will have no objection to such interviews, provided an application in that behalf is duly made to the Jail authorities before hand. We direct the Jail authorities to dispose of all such applications expeditiously.
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- F Some argument was raised on the question whether the detenu was being kept in solitary confinement in his cell. It appears from the record before us that the detenu has been provided two adjacent cells and enjoys a certain degree of freedom of movement from early morning to the evening. It is also mentioned that a convict officer serves as his cook and he is entitled to contact two wardens, one of whom is available in the ward itself and the other is posted at the gate of the ward. It is stated that medical officers and male nurses also attend on the detenu. The respondents claim that condition No. 4(ii) of the National Security (Rajasthan Conditions of Detention) Order, 1984 empower them to keep the detenu separate from ordinary prisoners. Learned
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- H counsel for the petitioner has been unable to satisfy us that the nature of the detenu's detention calls for interference by the Court.

Learned counsel for the petitioner alleges that the petitioner was tortured during an earlier stage of his detention, and has sought to prove this by summoning the Visitors' Register maintained at the District Jail, Bharatpur in order to show that police officers had visited the detenu and interrogated him. While we are of opinion that the petitioner is entitled to adduce evidence in support of the allegation of torture, we fail to see how the Visitors' Register will substantiate that charge. The Register will indicate the identity of the visitors, and may record the duration of the visits. It has not been shown that it will prove what actually went on during the visits. In the circumstances we see no reason to send for the Register.

The writ petition is disposed of accordingly.

A.P.J.