

Before M. M. Punchhi, J.

MANJIT SINGH DHINGRA,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Criminal Writ Petition No. 194 of 1986

August 28, 1986.

Constitution of India, 1950—Article 226—Person sought to be detained under the Act in compliance with the order of detention passed by a State Government—Such person fearing arrest challenging the order before High Court in another State under Article 226—High Court in that State—Whether should assume jurisdiction in the matter—Order of detention passed—Whether ought to be quashed by the said High Court.

Held, that though the power under Article 226 of the Constitution of India, 1950 is wide and extraordinary, it yet remains discretionary with the Court to exercise it or not in a given set of circumstances. The High Court would be slow to assume jurisdiction over the matter on which a sister court can with more efficacy promptitude and exactitude hold an enquiry and grant relief. It would, therefore, be the High Court in the State which passed detention order which could grant adequate relief to the proposed detenu as that Court has the necessary equipment and all the means to expand and inquire into the subject. In this view of the matter the order of detention is not liable to be quashed by the High Court.

(Paras 5 and 6)

Writ petition under articles 226/227 of the Constitution of India praying that :—

- (i) That this Hon'ble Court may be pleased to call for records of the case, in particular the order of detention and the grounds of detention and the record and documents connected therewith, to enable this Hon'ble Court to satisfy as to the legality and propriety thereof.
- (ii) Cause furnishing copy of the Grounds of Detention of the petitioner;
- (iii) Permit the petitioner to add to or alter the averments and grounds of this petition;
- (iv) Issue a Writ of Mandamus, order or direction in the nature thereof, directing the respondents not to execute/

implement the impugned order of detention contained in Annexure P/4 during the pendency of the Writ petition;

(v) Issue a writ of Certiorari or any other appropriate writ, order or direction quashing the impugned detention order;

(vi) This Hon'ble Court may please dispense with the filing of the certified copies of the Annexures as the same are not readily available.

(vii) That the petitioner apprehends immediate arrest by the detaining Authority, therefore, the service of notices as required under the rules may kindly be dispensed with and meanwhile the Respondents may be restrained from placing the petitioner under arrest/detention in connection with the incidents mentioned in the foregoing.

(viii) Pass any other such order or grant such relief as this Hon'ble Court deems fit, just and proper in the circumstances of this case.

K. K. Cuccria, Advocate, for the Petitioner.

H. S. Brar, Advocate, for Respondent No. 1.

D. S. Brar, Deputy Advocate-General, Punjab, for Respondent No. 2.

JUDGMENT

M. M. Punchhi J. (Oral)—

(1) The petitioner, Manjit Singh Dhingra, is in this Court challenging the order of detention dated 15th June, 1985 (Annexure P-4) passed by the State of Maharashtra under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. He prays for an interim relief in the nature of stay of arrest or operation of the impugned order.

(2) A similar relief was claimed by the petitioner in Criminal Writ No. 978 of 1985 which came up for hearing before me on 11th December, 1985. I had dismissed the petition *in limine*, for the petitioner then was not categorical as to whether any order had been passed by the State of Maharashtra. It is in those circumstances that I had taken the view that since the petitioner had not produced

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a copy of the detention order and even had not been detained within the jurisdiction of this Court, no cause of action arose and thus that petition merited dismissal. Now the petitioner has filed a copy of the detention order and apprehensive of his arrest on its being carried out within the jurisdiction of this Court, he has laid challenge thereto.

(3) Notice of motion was issued. The respondents have filed replies and raised plea of jurisdiction.

(4) The learned counsel for the petitioner has relied on a Division Bench judgment of the Bombay High Court in *N. K. Nayar and others v. The State of Maharashtra and others* (1) as also two Single Bench decisions of the Delhi and Karnataka High Courts reported as *Delhi Development Authority v. Ganga Singh and another* (2) and *Dr. L. R. Naidu v. State of Karnataka* (3) respectively. All these cases relate to the power of the Court under section 438, Code of Criminal Procedure. The Bombay High Court in *N. K. Nayar's* case (supra) has taken the view that its powers are wide enough to include the power to grant *interim* anticipatory bail to a person situated within its jurisdiction for an offence allegedly committed outside the State of Maharashtra. The Delhi High Court in *Delhi Development Authority's* case (supra) has gone even further by saying that not only can it grant interim bail but can also confirm it. The Karnataka High Court is, however, in line with the Bombay view. Grant of a limited anticipatory bail was spelled out as within the power of the Court under section 438, Code of Criminal Procedure. On the other hand, there is a Full Bench judgment of the Patna High Court in *Syed Zafr-ul Hassan and another v. State* (4), where the expressions "the High Court" or "the Court of Session" in section 438, Code of Criminal Procedure, have been held to mean those Courts within whose territorial jurisdiction the accusation of having committed a non-bailable offence arises or is made. The Patna High Court took the view that the apprehension of arrest by such accused is with regard to that particular offence having a particular locale and not generically. In other words, physical presence of the accused in a particular jurisdiction did not confer jurisdiction on that

(1) 1985(2) Crimes 304.

(2) 1980 Cr. L. J. 1175.

(3) 1984 Cr. L. J. 757.

(4) 1985 Cr. L. J. 605.

Court to grant him anticipatory bail under section 438, Code of Criminal Procedure, when the offence was committed in another jurisdiction and accusation lay against him in that jurisdiction. On the strength of these decisions, Mr. Cuccria, learned counsel for the petitioner, says that there is a conflict of opinion and the matter deserves to be heard by a larger Bench.

(5) I am afraid the conflict suggested is not germane to the case in hand. The petitioner has not approached this Court under section 438, Code of Criminal Procedure. He is in a petition under Articles 226/227 of the Constitution of India challenging a detention order. In determining the question of jurisdiction in *Sardar Ujagar Singh Sekhwan and others v. The State of Punjab and others* (5), I had expressed the following view:—

“..... Furthermore, this Court would be slow to assume jurisdiction over a matter on which a sister Court can, with more efficacy, promptitude and exactitude, hold an inquiry and grant relief. In making this observation, this Court has in mind the availability of the Rajasthan High Court at Jodhpur which can grant prompt and adequate relief to the petitioners.”

It was further observed:

“..... Let us assume that this Court has the jurisdiction (not by any means now holding so) but it cannot be denied that the Rajasthan High Court too has jurisdiction. The petitioners thus must be relegated to seek their remedies in that Court. Though the power under Article 226 of the Constitution is wide and extraordinary, it yet remains discretionary with this Court to exercise it or not in a given set of circumstances.”

(6) I am still of the same view. It is the Bombay High Court which can grant adequate relief to the petitioner and the petitioner is relegated to seek his remedy there. That Court has the necessary equipment to grant prompt and adequate relief to the petitioner. That Court has all the means to expand and enquire into the subject and have its orders obeyed in a better way.

(7) For the foregoing reasons, this petition is dismissed *in limine*.

R.N.R.

(5) Cr. W. 426 of 1986 decided on 12th August, 1986.