*Before M. M. Punchhi, J.*

NARINDER SINGH,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND OTHERS —*Respondents.*

*Criminal Writ Petition No. 222 of 1982.*

August 5, 1982.

*National Security Act (LXV of 1980)—Sections 3(2) and 3(3)—Constitution of India 1950—Art. 226—Detenu in jail custody pending prosecution in a criminal case—Pendency of prosecution or jail custody—Whether a bar to preventive detention—Reasons for such detention—Whether necessarily to be stated in the detention order—Preventive detention and criminal conviction—Distinction—Strict rules of pleadings—Whether applicable to habeas corpus petitions.*

*Held,* that the preventive detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is satisfaction of the executive of the reasonable probability or prognosis of the future behaviour of a person, based on his past conduct, in the light of the surrounding circumstances. The likelihood of the detenu acting in a manner similar to his past acts may satisfy the detaining authority to prevent him by detention from doing the same. A criminal conviction, on the other hand, is for an act already done which can only be achieved by a regular trial and legal evidence. There is thus no question of any parallel between prosecution in a court of law and an order of preventive detention; the first being a punitive action and the second being a preventive one. Qualitatively, there is a difference in the two. The power of preventive detention being precautionary in nature is exercised in reasonable anticipation and is not a parallel proceeding with a prosecution. It does not overlap with the prosecution, even if it dilates upon certain facts for which prosecution has been launched or may have been launched. An order of preventive detention may even be made before or during the prosecution, with or without prosecution, in anticipation of or after discharge or even acquittal. Thus, pendency of prosecution is no bar to an order of preventive detention and vice versa.

(Para 6).

*Held,* that an order of detention can be passed against a person in jail custody, in anticipation of his release in the near foreseeable future, subject, of course, that the detaining authority at the time of passing such an order was satisfied that it was necessary to do so on grounds permissible to him under the relevant Act.

(Para 7).

Narinder Singh *v.* The State of Punjab and others
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*Held,* that there are no strict rules of pleadings for *habeas corpus,* as the practice has been evolved judicially in this country. No undue emphasis can be placed on the question as to on whom the burden of proof lies. When a rule is issued, it is incumbent on the detaining authority to satisfy the court that the detenion of the petitioner is legal and in conformity with the mandatory provisions of the law authorising such detention. Simultaneously, once the rule is issued, it is the bounden duty of the court to satisfy itself that all the safeguards provided by law has been scrupulously observed and the citizen is not debarred of his personal liberty otherwise than in accordance with law. This practice marks a departure from that obtaining in England where observance of the strict rules of pleading is insisted upon even in case of an application for a writ of *habeas corpus.*

(Para 8).

*Held,* that it is not required of a detaining authority when passing an order of preventive detention relating to a person in jail custody to give in its order the reasons for such compelling step.

(Para 12).

*HABEAS CORPUS PETITION under Articls* 226 *of the Constitution of India praying that the impugned order Annexure P.* 1 *be quashed and the respondents be directed to release the petitioner immediately.*

*It is further prayed that respondents be directed to provide all the facilities to the petitioner which he is entitled under the Constitution.*

*It is also prayed that any Order, Direction under the circumstances of this case may be further issued.*

*It is also prayed that the petition be allowed with costs.*

G. S. Grewal, Advocate and H. S. Nagra, Advocate with him, *for the Petitioner.*

G. S. Bains, A.A.G. Punjab, *for the Respondents.*

JUDGMENT

*M. M. Punchhi, J.* (oral)

1. These are two writ petitions for *habeas corpus.* They raise a liberatory legal question. It is, whether or not, it is required of a detaining authority, when passing an order of preventive detention,

pertaining to a person in jail custody, to give in its order of detention itself the reasons for such compelling step.

2. Criminal Writ No. 222 of 1982 has been preferred by Narinder Singh and Criminal Writ No. 223 of 1982 has been preferred by Bua Singh. These petitions have been framed identically. The impugned detention orders, Annexure P.1, to both petitions are identical and the grounds of detention too are practically identical. The respective orders have been passed against each petitioner by the District Magistrate, Amritsar in exercise of his powers under sections 3(2) and 3(3) of the National Security Act, 1980 for he was of the view that in order to prevent each petitioner from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him. The grounds of detention in each case are based on each petitioner having indulged in the past in activities prejudicial to the maintenance of public order. The relevant abstracts of the grounds of detention in each case may well be paralleled.

*Narindtr Singh*

1. On 16th September, 1981, at 2.30 A.M., you alongwith Satinderjit Singh, Bua Singh put guny bags under the front tyres of Bus Nos. ..... belonging to Punjab Roadways and set them to fire in an attempt to burn the buses while these buses were parked at Bus Stand, Amritsar.....A case F.I.R. No. 229 dated 17th September, 1981, u/s 435, IPC? Police Station 'A' Division, Amritsar was registered. On 5th January, 1982, you alongwith your companions were arrested and were directed to cover up your face as identification parade was to be held, but you refused to participate in the parade.

*Bua Singh*

1. On 16th September, 1981, at 2.30 A.M., you alongwith Satinderjit Singh, Narinder Singh put gunny bags under the front tyres of Bus Nos..... belonging to Punjab Roadways and set them to fire in an attempt to burn the buses while these buses were parked at Bus Stand, Amritsar.....A case F.I.R. No. 229 dated 17th September, 1981, u/s 435, IPC, Police Station 'A' Division, Amritsar was registered. On 5th January, 1982, you alongwith your companions were arrested and were directed to cover up your face as identification parade was to be held, but you refused to participate in the parade.

2. That on 18th September, 1981, at about. 12.30 A.M., Bua Singh alongwith Satinderjit Singh, armed with *kirpans,* and you with a CANY in your hand set fire to the *biri* cigarette shops of Sarvshri Ram Dev and Amrit Lal situated at Dal Mandi Chowk.....Doors of the shops were burnt, but the fire was put off with the help of the Fire Brigade. A case F.I.R. No. 264 dated 18th September, 1981 under section 436, Indian Penal Code, Police Station 'D' Division, Amritsar, was registered in which you were arrested.

2. That on 18th September, 1981, at about 12.30 A.M., you alongwith Satinderjit Singh armed with *kirpans* and Narinder Singh with a CANY in your hand set fire to the *biri* cigarette shops of Sarvshri Ram Dev and Amrit Lal situated at Dal Mandi Chowk .....Doors of the shops were burnt, but the fire was put off with the help of the Fire Brigade. A case F.I.R. No. 264 dated 18th September, 1981 under section 436, Indian Penal Code, Police Station 'D' Division, Amritsar, was registered in which you were arrested.

3. On 19th September, 1981, at about 12 O'clock at night, you alongwith Satinderjit Singh, Bua Singh sprinkled kerosene oil in the Pan Shop of Hans Raj .....as a result of which case F.I.R. No. 330 dated 19th September, 1981 under section 436, I.P.C., Police Station 'C' Division, Amritsar, was registered in which you were arrested.

3. That on 19th September, 1981, at about 12 O'clock at night, you alongwith Satinderjit Singh and Narinder Singh sprinkled kerosene oil in the Pan Shop of Hans Raj ..... as a result of which case F.I.R. No. 330 dated 19th September, 1981 under section 436, I.P.C., Police Station 'C' Division, Amritsar, was registered in which you were arrested.

4. On 23rd September, 1981, at 11.15 P.M., you alongwith Satinderjit Singh and Bua Singh put on fire ..... pan biri cigarette shop of Shri Bhabuti Ram ..... as a result of which case F.I.R. No. 337

4. On 23rd September, 1981, at 11.15 P.M., you alongwith Satinderjit Singh and Narinder Singh put on fire ..... pan biri cigarette shop of Shri Bhabuti Ram ..... as a result of which case F.I.R. No. 337 dated

dated 24th September, 1981 under sections 436/511, I.P.C., Police Station 'C' Division, Amritsar, was registered. You alongwith your companions were arrested in the abovesaid case.

5. On the night between 28/29th September, 1981, you alongwith Satinderjit Singh and Bua Singh after sprinkling kerosene oil tried to burn Sub-Post Office situated at Hide Market, Amritsar, as a result of which case, F.I.R. No. 233 dated 29th September, 1981, under sections 436/511, I.P.C., Police Station 'A' Division, Amritsar, was registered in which you were arrested.....

6. Nil.

24th September, 1981 under sections 436/511 I.P.C., Police Station 'C' Division, Amritsar, was registered. You alongwith your companions were arrested in the abovesaid case.

5. On the night between 28/29th September, 1981, you alongwith Satinder Singh and Narinder Singh after sprinkling kerosene oil tried to burn Sub-Post Office situated at Hide Market, Amritsar, as a result of which case, FI.R. No. 233, dated 29th September, 1981, under sections 436/511, I.P.C., Police Station 'A' Division, Amritsar, was registered in which you were arrested.

6. On 7th October, 1981 at about 1.30 A.M., you alongwith Amarjit Singh Chawla and Satinderjit Singh had thrown handgrenade at the courtyard of gate lodge No. 26 of Hussainpura Railway Phatak with the result that the floor was broken and the signs of the strikings of grenade were on the wall and a telephone line was also damaged. Case F.I.R. No. 240 dated 7th October, 1981 under sections 435/436, Indian Penal Code, Police Station 'A' Division, Amritsar, was registered in which you were arrested.

On account of the abovesaid activities of the petitioners, the District Magistrate observed that he was satisfied that each petitioner be detained with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. Each petitioner was informed that he had a right of representation which he could make to the Government in the time allotted, as also the right of personal hearing before the Advisory Board. The grounds were supplied in Punjabi (Gurmukhi Script) and an English translation thereof was also sent to the respective petitioners. The identity is plain from the paralleled grounds for detention except ground No. 6, which is exclusive to Bua Singh, petitioner.

3. In the present petitions, a number of grounds were raised by the petitioners. They claim to have been falsely implicated in various criminal cases of serious nature, which were pending in the various Courts of the State of Punjab, for the reason that they were politically opposed to the Chief Minister of Punjab, being active members of the Akali Party. It was suggested that the petitioners had been detained on account of the Chief Minister having adopted the policy of embarrassing and demoralising the Sikh youth to prevent them from indulging in political activity which was not to the liking of the State Government. It was asserted that at the time when the impugned orders were passed, the petitioners were already detained in Central Jail, Amritsar, due to the involvement in the aforementioned criminal cases, but in the impugned orders itself, it had nowhere been clearly stated as to how could they, being already under detention, act prejudicially to the maintenance of public order. The petitioners claim that in view of the judgment of the Supreme Court in *Vijay Kumar* v. *State of J. & K. and others,* (1), it was incumbent upon the detaining authority to expressly state in the order itself as to why the petitioners were still required to be detained under the Act to prevent them from activities which were prejudicial to the maintenance of public order, when they were already under detention on account of alleged criminal cases. From this, it was spelled out that there was non-application of the mind by the detaining authority when passing the impugned detention orders. Furthermore, it was asserted that the detaining authority did not

(1) AIR 1982 S.C. 1023.

seem to be conscious even that the petitioners were already under detention as the impugned orders did not speak that those had to be served on the petitioners in the jail. It was also highlighted that the alleged incidents relied upon in the grounds were of September, 1981 (except for ground No. 6 of Bua Singh which related to October, 1981) and those incidents were not proximate to 21st April, 1982, the date on which the impugned detention orders were passed. Lastly, it was lamented that the detaining authority had not taken into consideration the entire relevant material, which could have affected its mind, for it has not taken into consideration other cases which had been instituted against the petitioners. And if the details of those had been supplied to it, it may have not chosen to detain the petitioners. The other grounds taken in the petitions relate to the post-detention period to which no advertence was made by the learned counsel for the petitioners.

4. In both cases, the three respondents had filed returns. The District Magistrate, respondent No. 2, while countering the material allegations in the petitions, has averred that although it was not expressly mentioned in the impugned orders of detention, but he was all the same aware of the arrest of the petitioners in the criminal cases, as was evident from the grounds of detention conveyed to the petitioners. He further averred that in view of the nature of the cases and the short-lived confinement of the petitioners in them, it was considered necessary to pass the impugned orders with a view to prevent the petitioners from acting in a manner prejudicial to the maintenance of public order. He thus asserted that there was proper application by him of his mind before passing the impugned detention orders. He has taken the stance that the incidents mentioned in the grounds of detention clearly relate to public order and were relevant to be considered and they had time nexus to the orders of detention. The Joint Secretary to Government, Punjab, has filed a return on his affidavit for the State of Punjab to convey that the State Government had duly approved the detention order under sub-section 4 of section 3 of the Act and it was approved on merit alone without any extraneous considerations. The allegation of embarrassing and demoralising the Sikh youth was denied. Respondent No. 3, the Superintendent Central Jail, Amritsar, on his affidavit gave reply to the grounds taken of the post-detention period which are not relevant for the present purpose.

5. As has been noticed above, the petitioners primarily rely on *Vijay Kumar's case* (supra) to project their view point. Added thereto is a judgment of C. S. Tiwana, J. in *Harsimran Singh* v. *The State of Punjab and others,* (2), in which *Vijay Kumar's case* was followed to release that detenu. But before the ratio of these two cases is to be taken into account, a few earlier cases of the Supreme Court, having a bearing on the point be noticed, as also the distinction between the concepts of preventive detention and a criminal conviction.

6. The principle is well known that the preventive detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is satisfaction of the executive of the reasonable probability or prognosis of the future behaviour of a person, based on his past conduct, in the light of the surrounding circumstances. The likelihood of the detenu acting in a manner similar to his past acts may satisfy the detaining authority to prevent him by detention from doing the same. A criminal conviction, on the other hand, is for an act already done which can only be achieved by a regular trial and legal evidence. There is thus no question of any parallel between prosecution in a court of law and an order of preventive detention, the first being a punitive action and the second being a preventive one. Qualitatively, there is a difference in the two. The power of preventive detention being precautionary in nature is exercised in reasonable anticipation and is not a parallel proceeding with a prosecution. It does not overlap with the prosecution, even if it dilates upon certain facts for which prosecution has been launched or may have been launched. An order of preventive detention may even be made before or during the prosecution, with or without prosecution, in anticipation of or after discharge or even acquittal. Thus, pendency of prosecution is no bar to an order of preventive detention and vice versa.

7. Now the case law. In *Ashim Kumar Ray* v. *State of West Bengal,* (3), a Bench of three Hon'ble Judges, in the case of a detention order pertaining to a person in jail custody, observed

(2) CW 204/82 decided on 14th July, 1982.

(3) AIR 1972 S.C. 2561.

as follows :—

> "Where, however, the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it would be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which could jeopardise either the security of the State or the public order."

In *Masood Alam etc.* v. *Union of India and others,* (4), again a Bench of three Hon'ble Judges observed as follows :—

> "There is no legal bar in serving an order of detention on a person, who is in jail custody, if he is likely to be released soon thereafter and there is relevant material on which the detaining authority is satisfied that if free the person concerned is likely to indulge in activities prejudicial to the security of the State or maintenance of public order."

And then again :—

> "The real hurdle in making an order of detention against a person already in custody is based on the view that it is futile to keep a person in dual custody under two different orders, but this objection cannot hold good if the earlier custody is without doubt likely to cease very soon and the detention order is made merely with the object of rendering it operative when the previous custody is about to cease.

The principle enunciated in *Ashim Kumar Ray's case* (supra), which stands reaffirmed in *Masood Alam's case* (supra), was held to be correctly stated in *Haradhan Saha* v. *The State of West Bengal and others,* (5), by a Bench of five Hon'ble Judges. Reiteratingly one of the principles emerging from various cases was

(4) AIR 1973 S.C. 897.

(5) AIR 1974 S.C. 2154.

stated by the Court as :

> "Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there should be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order."

Thus the matter has authoritatively been settled by the highest Court of land that an order of detention can be passed against a person in jail custody, in anticipation of his release in the near foreseeable future, subject, of course, that the detaining authority at the time of passing such an order was satisfied that it was necessary to do so on grounds permissible to him under the relevant Act.

8. An important procedural issue may now be dealt with. The petitioners relying on *Smt. Icchu Devi Choraria* v. *Union of India and others,* (6), asserted that there are no strict rules of pleadings for *habeas corpus,* as the practice has been evolved judicially in this country. In the said case, it has been held that no undue emphasis can be placed on the question as to on whom the burden of proof lies. When a rule is issued, it is incumbent on the detaining authority to satisfy the Court that the detention of the petitioner is legal and in conformity with the mandatory provisions of the law authorising such detention. Simultaneously, once the rule is issued, it is the bounden duty of the Court to satisfy itself that all the safeguards provided by law have been scrupulously observed and the citizen is not debarred of his personal liberty otherwise than in accordance with law. This practice, as observed by the Court, marks a departure from that obtaining in England where observance of the strict rules of pleading is insisted upon even in case of an application for a writ of *habeas corpus.* The petitioners' counsel has employed the principle to contend that it was difficult for the petitioners to detail out the various cases, but for these which are mentioned in

(6) AIR 1980 S.C. 1983.

the grounds of detention, in which the petitioners were involved, and had the particulars of all cases been brought to the notice of the detaining authority, he may not have passed the orders of detention. The learned Assistant Advocate General on the strength of the departmental file has pointed out that there was only one more case in which the petitioners were commonly involved and that was a case relating to an F.I.R. dated 12th October, 1981 under sections 307/353/332/148/149, Indian Penal Code, which related to offences which had nothing to do with public order. He was fair enough to concede that when the proposal to detain the petitioners was initiated, this case was not specifically brought to the notice of the District Magistrate. On record, though he was advised to say that he was otherwise aware of it. The explanation rendered by the learned Assistant Advocate General carries weight as the said case was patently that of violence by an unlawful assembly, but the incidents related in the impugned detention orders are cases of arson. That case has, therefore, no bearing on the point. Added thereto in the same breath, the learned Assistant Advocate General explained that the District Magistrate on account of the wide responsibility he holds in the District was fully aware of the fact that the petitioners were in jail custody in cases mentioned in the grounds of the detention orders, as is plain from the language employed therein, and also was otherwise aware that the petitioners had secured bail orders in those cases, but had not submitted their bail bonds. It was specifically stated at the bar, and which could not be refuted by the learned counsel for the petitioners, and which is otherwise a matter of record, Narinder Singh, petitioner obtained bail orders on 19th February, 1982, 12th February, 1982, 12th February, 1982, and 19th March, 1982 respectively in cases mentioned in grounds Nos. 1 to 5. Similarly, Bua Singh petitioner obtained bail orders from the Court on 12th February, 1982, 23rd January, 1982, 1st January, 1982, 1st April, 1982 and 19th April, 1982 respectively in cases mentioned in grounds Nos. 1, 2, 4 to 6, but had obtained no such order in case referred to in ground No. 3 and was likely to get it if asked for on the parity of the other cases, since his co-accused Narinder Singh had been released on bail in that very case. On the strict rule of pleadings, these explanations could well be ignored. But, as authoritatively pronounced in *Smt. Icchu Devi Choraria's case* (supra), these details and explanations have to be looked into and considered by the Court if offered on behalf of the detaining authority towards

satisfying a Court that the detention of the detenu is proper and is in conformity with the provisions of the law. And this is the bounden duty of the Court as well to satisfy itself that all the safeguards provided by law have been scrupulously observed. These details are clearly clarificatory to the specific stance taken by the District Magistrate in his returns that in view of the nature of the cases and the short-lived confinement of the petitioners in criminal cases, it was considered necessary to pass the impugned detention orders. The time factor of the confinement of the petitioners was, as per his affidavit, in the mind of the detaining authority too as he must be alive to the question that if the period of jail custody was fairly large, then perhaps the matter would turn to be different. As is plain, the petitioners could have abruptly submitted the bail bonds and cashed on the bail orders afore-detailed. Thus, to my mind, the detention orders are unassailable on the twin grounds that the District Magistrate was not aware of the petitioners' detention in jail custody or that he was not aware of the existence of the bail orders of Courts in favour of the petitioners. The existence of the bail orders having put the confinement of the petitioners short-lived anticipatingly, the impugned action of a preventive nature could validly be said to have been called for.

9. Now in *Vijay Kumar's case* (supra), the Supreme Court had a case in which neither in the detention order nor on affidavit nor otherwise was the detaining authority found aware that the detenu had been arrested in a criminal case. In paragraph 8 of the Report, it was observed :—

> "The order *ex facie* does not show that the detaining authority was aware that the detenu was already arrested and kept in jail. If the detaining authority was conscious of the fact that the detenu was already arrested and confined in Jail, the order *ex facie* would (emphasis mine) have shown that even though the detenu was in jail, with a view to preventing him from acting in a manner prejudicial to the security of the State it was necessary to detain him ..... The detention order does not give the slightest indication that the detaining authority was aware that the detenu was already in jail."

And then again in paragraph 9 of the Report:—

> "May be, in a given case there yet may be the need to order preventive detention of a person already in jail. But in such a situation, the detaining authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order needs to be made. There is nothing to indicate the awareness of the detaining authority that detenu was already in jail and yet the impugned order is required to be made. This, in our opinion, clearly exhibits non-application of mind and would result in invalidation of the order. We, however, do not base our order on this ground."

Now it is noteworthy that instead of the word "would" (mine emphasis), had the Supreme Court used the word "should" then it would have been a statement of law that the detaining authority was *ex facie* in the order itself required to state compelling reasons for making a preventive detention order against a person already in jail custody. As it seems to me, no material was placed before the Court from which it could spell out that detaining authority was aware that the detenu was in jail custody. Furthermore, that despite his being in jail custody, there were reasons which compelled it to pass the detention order. Nowhere has it been held that those compelling reasons have to embody themselves in detention order. And in the same breath, as it seems to me, nowhere has it been held that the compulsion for the step must be grave and exceptional. It is compulsive in the sense to be other than normal, extraordinary. In the context, what has been meant is that a preventive detention order normally is passed against a man who is at liberty, but if passed against a man in jail custody, that factor has to be taken into account and adequately met to justify the action, but not necessarily in the order itself. It can otherwise be met in Court when called upon, by affidavit, production of record, faithful explanations and material of the like.

10. In *Harsimran Singh's case* (supra), C. S. Tiwana J. of this Court held as follows:—

> "All that can be said in favour of the respondents is that the District Magistrate knew about the fact that the

petitioner was in detention, but he has not said anything in the order as to how a person already under detention could carry on such activities as could be prejudicial to the maintenance of public order. What to say of compelling reasons for a preventive detention order, there is no reason at all which could be spelled out from the order itself. The learned State counsel appearing on behalf of respondents Nos. 1 and 2 has been unable to tell as to what possible danger could there be to the public order if the petitioner was already under detention in about eight cases in relation to which he was to be tried and kept in custody. Respondent No. 2 mentioned in the written statement filed by him that at the confinement of the petitioner in jail was not sufficient to prevent him from acting in a manner prejudicial to the maintenance of public order, but, again, he failed to mention any reason for the same. It has been tried to be shown that before the impugned order he had passed such an order dated May 5, 1982, in which he mentioned that he was conscious of the fact that Harsimran Singh was already confined in jail in connection with some criminal cases. Then he added this thing in the order that in view of the material placed before him the aforesaid confinement of Harsimran Singh in jail was not sufficient to prevent him from acting in a manner prejudicial to the maintenance of public order.....In the grounds of detention some utterances made by the petitioner on October 3, 1981; October 30, 1981, and November 12, 1981, had been referred to. There is a reference to nothing which he did after he had been arrested in the criminal cases against him. Thus the observation in *Vijay Kumar's case* (supra) can be applied to this case for holding that there was a non-application of the mind of the District Magistrate in reaching this conclusion in a reasonable manner that the detention of the petitioner was required to be made in spite of the fact that he was already in judicial custody in connection with the trial of different cases against him. The order of detention is, therefore, clearly invalid."

(11) As is obvious, *Harsimran Singh's case* was a case in which there was no likelihood of the detenu being released in the foreseeable future. It was a case in which the detenu's being in jail

custody was considered not sufficient by the detaining authority to prevent him from acting in a manner prejudicial to the public order. Nowhere has the Hon'ble Judge laid down as a rule that the order of detention must mention the compelling reasons in the preventive detention order itself against a man in jail custody. Had it been so, the order would have been struck down on that score alone. Then the Hon'ble Judge would not have felt the necessity of going through the written statement, perusing the record and seeking the explanations of the counsel appearing for the detaining authority. *Harsimran Singh's case* is a case on its own facts and cannot be a precedent for the instant cases. The contention raised by the learned counsel for the petitioners that the said case is a binding precedent is totally misconceived.

(12) A resume of the above discussion would reveal that the detaining authority, well aware of the bail orders passed in the cases against the petitioners (except for one in Bua Singh's case which was likely to follow likewise), was compelled to pass the impugned detention orders respectively against the two petitioners in anticipation of their release in the near foreseeable future. Accordingly, I am of the considered view that its action was within the field of the action permissible under the law, as laid down by the Supreme Court in decisions above-quoted and in particular of *Haradhan Saha's case* (supra). I also hold that it is not required of a detaining authority, when passing an order of preventive detention relating to a person in jail custody to give in its order the reasons for such compelling step.

It was then contended by learned counsel for the petitioners that the impugned orders have no nexus with the activities of the petitioners complained of when they had taken place in September/ October, 1981 and the impugned orders had been passed on 21st April, 1982. nearly 7/8 months later. Reliance was placed on *Jagan Nath Biswas* v. *The State of West Bengal*, (7), in which for one incident there was delay of six months in passing the detention order, and *Md. Sahabuddin* v. *The District Magistrate and others*, (8), in which there was a gap of seven months between the incident and the detention order. These two cases are peculiar of their own kind inasmuch as no explanation, whatever in the form

(7) A.I.R. 1975 S.C. 1516.

(8) A.I.R. 1975 S.C. 1722.

of affidavit or otherwise, was forthcoming before the Court from the detaining authority, and it was presumed in the later case that there was no explanation worth offering. These precedents, as the learned counsel for the petitioners has pressed, have not laid down the proposition that 6/7 months gap between the incident and the order is always an indication of absence of nexus. Nexus is to be judged by the detaining authority on account of prior events or past conduct and antecedent history of a person, showing tendencies or inclinations of the person concerned that an inference can be drawn that he is likely, even in the future, to act in a manner prejudicial to public order. If the authority is satisfied that in view of the past conduct of the person, there is need for detention then it could not be said that the order of detention is not justified because of the time factor. It all depends on a case and a case. In *Fitrat Rada Khan* v. *State of Uttar Pradesh and others* (9), a lapse of more than one year between the incidents and the order was not considered fatal to the detention order for the antecedent history of the person and his prejudicial conduct was considered proximate in time and having rational connection with the detention order. Here too the tendencies of the petitioners to commit arson and that too in quick succession in a short span in the holy city of Amritsar, had the effect of disturbing public order, and as the detaining authority was satisfied, were likely to be repeated if the petitioners were to secure by bail their release from jail custody. It is a clear case of establishment of nexus and proximity.

(13) Lastly, an argument of despair was raised for the petitioners that the District Magistrate may be aware of the petitioners' detention in jail as also their impending release, but such material was not made available to the State Government, who approved the order of the detaining authority. Firstly, there is no material to substantiate this allegation and secondly if the initial detention orders were well-founded, the approval given to them by the State Government is to be taken as equally well-founded. The explanation, as rendered by the Assistant Advocate-General was for one and all and valid in all events. This contention too, as raised, is rejected. Besides these, which have been dealt with, no order point was raised.

(9) A.I.R. 1982 S.C. 146.

(14) For the foregoing reasons, these petitions fail and are hereby dismissed, but without any order as to costs.

N. K. S.

*Before S. S. Sandhawalia, C.J. and G. C. Mital, J.*

B. D. BALI,—*Appellant.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Letters Patent Appeal No.* 129 *of* 1981.

August 5, 1982.

*Punjab Service of Engineers Class II (P.W.D., Irrigation Branch) Rules,* 1941,—*Rule* 9(2)—*Officer drawing higher pay on deputation reverted to the parent department—Such Officer—Whether can* ipso facto *claim seniority over those drawing lesser pay in the parent department—Fixation of basic pay in the parent department under proviso (II) to Rule* 9—*Whether can be claimed by the officer as that which he was drawing on deputation.*

*Held,* that many a time, the posts on which persons are sent on deputation, carry a higher pay but on reversion to the parent office, the incumbent again starts getting the pay scale of the parent department. Therefore, it cannot be said that merely because a person on deputation draws a higher pay, he would *ipso facto* be entitled to claim seniority over all those drawing lesser pay in the parent department.

(Para 5).

*Held,* that proviso (ii) of Rule 9 of the Punjab Service of Engineers Class II (P.W.D., Irrigation Branch) Rules, 1941, shows that seniority has to be reckoned on the basis of pay, which a member is permitted to draw on the first appointment. A reading of the plain language of the second proviso to Rule 9 clearly goes to show that if on appointment to Class II Service, an incumbent is permitted to draw higher pay in the scale than the initial stage in the seniority list he will rank next below all members already drawing that pay at that time. Proviso II does not govern how the pay is to be fixed. It merely talks of the result if on first appointment an incumbent is permitted to draw higher pay, then as a consequence thereto, he can claim seniority over members of the service already serving in case their pay at that time was less