

Har Jas Dev Singh vs State Of Punjab & Ors on 25 July, 1973

Equivalent citations: 1973 AIR 2469, 1974 SCR (1) 281, AIR 1973 SUPREME COURT 2469, 1974 (1) SCJ 288, 1974 (1) SCR 281, 1974 MADLJ(CRI) 233, (1973) 2 SCC 575, 1973 SCC(CRI) 895

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, Hans Raj Khanna, V.R. Krishnaiyer

PETITIONER:

HAR JAS DEV SINGH

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 25/07/1973

BENCH:

REDDY, P. JAGANMOHAN

BENCH:

REDDY, P. JAGANMOHAN

KHANNA, HANS RAJ

KRISHNAIYER, V.R.

CITATION:

1973 AIR 2469

1974 SCR (1) 281

1973 SCC (2) 575

CITATOR INFO :

R 1984 SC 444 (21)

F 1985 SC1082 (15)

D 1989 SC1234 (9)

ACT:

Maintenance of Internal Security Act, (26 of 1971)-Section 14(2)-Fresh facts, what are-Order of detention served while in confinement under Official Secrets Act-Order subsequently revoked-Thereafter released on bail-Second order of detention on identical grounds-If release on bail and variation in the enumeration of prejudicial acts amount to fresh facts.

HEADNOTE:

While the petitioner was in confinement under section 3 of the Official Secrets Act. 1923 an order of detention, made

under section 3 of the Maintenance of Internal Security Act, 1971, was served on him. The order expired since that was not approved by the State government. Thereafter the petitioner was released on bail. After his release on bail a fresh order of detention was passed. The detention was approved by the Advisory Board and the State Government confirmed the order.

The grounds of detention served on the petitioner were identical with the grounds on which the first order of detention was based except at ground No. 7 stated that since the petitioner was released on bail he was likely to continue his spying activities which would be highly prejudicial to the security of the State. Another difference was that in the first order of detention "Security of the State" and maintenance of Public Order were mentioned but in the second order only, security of the State" was mentioned.

The petitioner urged that since the grounds which formed the basis of the first order of detention were identical with the grounds for detaining him under the subsequent order, the latter order was bad and his detention was illegal. The respondent-State contended that since the petitioner was in jail at the time when the first order was served on him and revoked, his subsequent release on bail constituted a fresh fact. It was further urged on behalf of the State that the Act made a distinction between grounds and facts and that while grounds must have a nexus with the object of the order of detention facts stated therein need not necessarily have that nexus.

On the question whether the two variations from the first order of detention can be construed as "fresh facts" justifying the impugned detention within the meaning of section 14(2) of the Act. [289E]

HELD : There being no fresh facts on which the impugned detention order is made the order is invalid and the detention of the petitioner cannot be sustained had arisen on the basis of which the Central Government or the State Government or an Officer, as the case may be, was satisfied that such an order should be made the subsequent detention on the very same grounds would be invalid. [287C]

Masood v. Union, W.P. Nos. 469 & 470 of 1972 decided Jan. 11, 1973; Hadt Bardu Das v. District Magistrate [1969] 1 S.C.R. 227 referred to.

(ii).While it is true that 'grounds' and "facts" are used in opposition to each other, they must be taken as referring to two different things. The grounds are conclusions of fact or reasons which have induced the detailing authority to pass the order of detention. These are sometimes referred to as basic facts. Facts, however, constitute the evidence upon which the conclusions justifying the detention are made. [288B]

State of Bombay v. Atma Ram Vaidya [1951] S.C.R. 157; Ram Krishan v. State of Delhi [1953] S.C.R. 708 referred to.

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There may be facts which are not germane or are not relevant to the grounds justifying the detention and when section 14 refers to "fresh facts" it does not refer to facts which are not relevant but or such fresh facts on which the detaining authority is satisfied that an order of detention should be made if the fresh facts cannot form the basis of a conclusion on which the detention order can be made, then those facts are not fresh facts which will justify the detaining authority to make an order of detention. A fresh order of detention can only be made if fresh grounds came into existence after the expiry or revocation of the earlier order of detention. No fresh order could be made on the ground which existed prior to the revocation or expiry of an earlier order of detention. Parliament has enacted section 14 in order to prevent such a contingency.

[288E]

Massod v. Union of India W.P. Nos. 469 & 470 of 1972 decided on Jan. 11, 1973.

(iii).....The release of the detenu on bail does not constitute fresh facts as would justify the impugned detention order. Both the detention orders are passed under s. 13(1)(a)(ii) which set out the prejudicial acts under which the suspected actions of the detenu will fall and for which the detention is made. It is immaterial whether the detaining authority is satisfied that the grounds on which the detention is being made for preventing the detenu from acting in any manner prejudicial to the security of the State or the maintenance of public order or for preventing him from acting in any manner prejudicial to the security of the State alone, because, in either case, one of the objects is to prevent the detenu from acting in a manner prejudicial to the security of the State. The variation in the enumeration of prejudicial acts has nothing to do with fresh facts.

[289B]

JUDGMENT :

ORIGINAL JURISDICTION : Writ Petition No. 93 of 1973. Under Article 32 of the Constitution of India for issue of a writ in the nature of habeas corpus.

R. K. Jain, for the petitioner.

Harbans Singh and R. N. Sachdev, for respondents Nos. 1 to 4 & 7.

The following Judgment of the Court was delivered by JAGANMOHAN REDDY, J.-The petitioner challenges the order of detention dated March, 28, 1972 made under s. 3 of the Maintenance of Internal Security Act No. 26 of 1971- hereinafter called 'the Act'. Initially he was arrested under the

Official Secrets Act, 19 of 1923, and was remanded by the Magistrate on October 24, 1971. On November 19, 1971, the District Magistrate, Gurdaspur made an order of detention under s. 3 of the Act which was served on the petitioner while he was still in confinement under s. 3 of the Official Secrets Act. He was also served with the grounds of the detention. The Order of the District Magistrate, however, was not approved by the State Government and the petitioner was directed to be released in respect of his detention under the Act. The petitioner thereafter moved the Sessions Judge for bail and was directed on March 2, 1972 to be released on his executing a bail bond of Rs. 50,000/-. The bail bond furnished by him was accepted by the Sessions Court on March 14, 1972, on which date of the petitioner was released from jail. On March 28, 1972, a fresh order of detention was passed by the District Magistrate, Gurdaspur, which order was approved by the State Government on April 4, 1972. It is alleged that from March 14, 1972 to February 12, 1973 the petitioner did not appear before the Court in spite of repeated directions and undertakings given by his counsel. His application for exemption-from appearance was refused and thereafter on August 17, 1972 an application was made for taking action against him under s. 7 of the Act. On February 6, 1973 the detenu was declared a proclaimed offender. On March 12, 1973 he was arrested in Delhi and produced before a Delhi Magistrate who granted a transit remand for being produced before the Court at Batala and was accordingly produced before him on March 14, 1973. On March 15, 1973, the detention order dated March 28, 1972, was served on him. Representations made by him were rejected by the Government on April 10, 1973, and finally on April 30, 1973, his detention was approved by the Advisory Board. The State Government confirmed the order of detention. The contentions urged before us are better appreciated by a perusal of the grounds of detention. There are :

"1. That you, Harjasdev Singh s/o Ujagar Singh, Jat r/o village Talwara, p/s Srihargobindpur born on 15-4-41 in village Talwara matriculated in 1962 joined Military Service on 28-8-63 as Sepoy Clerk and later promoted as Havaldar Clerk in November, 1968 are Indian National. In Feb., 1967 when you were transferred to 10th Infantry Div. Hq at Suianpur and remained there till July, 1970 During this period, you, Hariasdev Singh have been collecting information regarding military units and conveying the same to Pak Intelligence Services. In return, you were suitably rewarded by the Pakistan officers and in support of this, the following facts have been duly proved against you :-

(i)...That during Oct., 1969, one Pritam Singh Jat r/o Baleem p/s KalanaUr allured you to indulge in espionage activities against India and give him Military intelligence and secret documents for passing on the same to his Pak masters for which you would be paid handsomely. You felt tempted and gave your consent to do the job. Pritam Singh gave you Rs. 60/- and promised to come after a week.

Pritam Singh again met you after about a week and you handed over to him a typed list of units under 10th Infantry Div. with their location-. You were paid Rs. 100/- more by Pritam Singh for this Job.

(ii)..Again in the Month of Nov., 1969, the abovesaid Pritam Singh, contacted you at Sujampur and paid you Rs. 100/- as your remuneration for supplying the list of staff officers at 10th Infantry Div.

HQ at Sujampur and also one Sketch on tracing paper regarding Road routes from Pathapkot to Akhnoor.

(iii).Again in the month Dec., 1969, you supplied 10th Infantry Div. Exercise paper-, to Pritam Singh who promised to compensate you for this after receiving payment from his Pak masters.

(iv)..That in Nov., 1970 when you were posted in 'A' branch HQ 67 Independent Infantry Brigade Company at Abohar, you were discharged from the Army due to your bad record.

"2. That during May/June, 1971 Pritam Singh who was on one month leave from the 26th Battalion to Shukargarh, Distt. Sialkot (Pakistan) and produced you before Major Akhtar and Sub. Zafar there. You along with Pritam Singh crossed the border from the left side of Indian Picket Bohar Wadala onward by the side of Dhussi band and reached Pak Picket Takhatpur, wherefrom you were taken to Pak Security Office, Shakargarh in a jeep by Sub. Zafar. There Major Akhtar and Sub. Zafar talked with you in seclusion. You gave out all the details of 10th infantry Div. to your knowledge to the Major. Your particulars were noted down on a printed form which was got signed by you and you were also got photographed. You passed on the following documents and Military Intelligence to the Pak Security Officers : -

(i)...Deployment statement of the Units under 25 Div. and other connected with units other than those under 25 Div.

(ii)..There was no movement of the Army Units in Dera Baba Nanak and Gurdaspur areas at that time.

The Major gave you Rs. 200/- as your remuneration and assigned you following task :-

(i)...To collect information about the postings and trainings of the Officers under 10 Infantry Div.

(ii) To collect any secret or top secret documents from any army...Officer.

(iii) To collect any pamphlet about the Army training or containing technical number of the Indian Army Units.

Both you and Pritam Singh thereafter crossed over to India via the same route.

3.....In the month of Sept., 1971 you alone crossed the Border via the same old route and met Major Akhtar and Sub. Zafar at Shakargarh and furnished the following documents and Military information to them :-

(i)...Ammunition scale of the units under 10 Infantry Div.

(ii)..One Pamphlet about the technical numbers of the Army Divisions, Brigades and units of Indian Army.

(iii).About posting of Major General Jaswant Singh as 10 Inf. Div. Commander.

(iv)..About movement of No. 10 Inf. Div. HQ from its previous headquarter at Sujanpur to the left side of the Dalbousie Road near Pathankot in the newly constructed barracks.

You were paid Rs. 200/- for this service and further allotted the following task --

(i)...To collect information about the construction work of Railway line from Pathankot to Jammu via Kathua.

(ii)..1300 MM gun supplied by Russia with which of the Indian Army and the location of that Unit.

(iii).Location of 4 House Units.

(iv) To collect Army new or old Photo of any V.I.P. about his visit at 10 Inf. Div. HQ or any unit under the Div.

You were then made to cross to India with a Pak national named Akhtar who was appointed a courier for collecting documents and military intelligence from you.

4.That you along with Akhtar reached Pathankot. Akhtar stayed there while you left for your village. After two days, you returned to Pathankot and gave Akhtar the following documents to be delivered to your Pak masters.

(i)...Three photos of Sh. Swaran Singh the then Defence Minister of V.I.P. visits in Akhnoor sector in 3 different poses with G.O.C. 10th inf. Div.

(ii)..Location statement of the units under 26 Inf. Div. and connected units.

(iii).Two sketches on tracing papers of obstacle plan of Akhnoor- Sector-part I and part II.

(iv)..4 House unit moved from Patiala to Madhopur area.

5.....That on 23-10-71 you were arrested by the local police of p/s Srihargobindpur from your house in case FIR No. 178 u/s 30 S. Act. On search of your house, the following documents in connection with your activities prejudicial to the Security of State were recovered

(i)...A list typed in English of Officers ACRS to be reviewed by the Brigade Commander.

(ii)..One white paper i.e. printed letter pad of HQ Ambala Sub Area, Ambala Cantt. with formation sign of the Sub Area units.

(iii).A rough sketch about the road from Batala Dera Baba Nanak-Kalanaur towards village Pakiwan showing some villages prepared by you to go to and from Pakistan in connection with your espionage activities, incriminating documents, along with other papers.

6.....That on interrogation you have been found to be a pak Spy.

7.....That in case FIR No. 178 referred to in Para 5 above, you have been released on bail by the District and Sessions Judge, Gurdaspur and it is now likely that you will continue your spying activities for the Pakistan Intelligence services or by crossing over to Pakistan, you are likely to divulge intelligence collected by you about our National vital installations, Military formations and Civil Defence forces, to Pak authorities which would be highly prejudicial to the security of the State in these days of Pak hostilities. It was first contended that as no return was filed by the State Government, the petitioner is entitled to be set at liberty under r. 5 of O. XXXV of the Supreme Court Rules; secondly, there is no nexus between the object of the order of detention and the grounds of detention; thirdly, a perusal of the grounds of detention will disclose that the order is really made under s. 3 (1) (a) (i) of the Act and not under s. 3 (1) (a) (ii) under which it is purported to be made, inasmuch as,,, the acts alleged against the detenu would justify an order being made to prevent him from acting in any manner prejudicial to the Defence of India and cannot justify an order against him from acting in any manner prejudicial to the Security of the State or the maintenance of public order. Finally, it was urged that since the grounds which formed the basis of the order of detention served on him on November 19, 1971 (hereinafter referred to as the first order) are identical with the grounds for detaining him under the impugned order, the impugned order is bad and his detention illegal.

Taking the last point first it is not disputed except for ground No. 7, that the grounds of detention first served on the petitioner on November 19, 1971 are identical with the grounds on which the impugned order of detention is made. There is, however, another minor difference between the two orders in that though the grounds mentioned in both the orders set out that the petitioner has been detained under S. 3 (1) (a) (ii) the grounds in the first order state that the detention of the petitioner was to prevent him from indulging in any manner prejudicial to the security of the State or maintenance of public order, while the grounds in the impugned order merely state that it was to prevent the petitioner from acting in any manner prejudicial to the security of the state only. The question is, whether these two variations from the first order can be construed as 'fresh facts' justifying the impugned detention within the meaning of S. 14(2) of the Act wherein it is provided;

"The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made."

There is no doubt that since the first order of detention dated November 19, 1971 was not approved by the State Government that Order of detention ceased to have force after 12 days from the date of the Order and that detention order had therefore expired on December 1, 1971. Even if the first order was revoked due to a technical defect the same result follows. In *Hadi Bandhu Das v. District Magistrate, Cuttack & Anr.*(1) it was urged on the analogous provisions of the Preventive (1) [1969] 1 S. C. R. 227 287 Detention Act 4 of 1950 that a detaining authority may issue a fresh, order after revocation of an earlier order of detention if the previous order was defective in point of form or had become unenforceable in consequence of a failure to comply with the statutory provisions of the Act. Negating this contention the Court observed at pp. '233- 234 "there is nothing in s. 13(2) which indicates that the expression "revocation" means only revocation of an order which is otherwise valid and operative : apparently it includes cancellation of all orders-invalid as well as valid". In these circumstances after the date on which the order ceased to be in force, unless fresh facts had arisen on the basis of which the Central Government or a State Government or an officer, as the case may be, was satisfied that such an order should be, made, the subsequent detention on the very same grounds would be invalid. This Court has in *Masood Alam etc. v. Union of India & Others*(1) has so held. In that case the detenu was arrested on June 15, 1972 pursuant to an order of detention dated June 14, 1972 made by the District Magistrate under s. (1) (a) (i) and (ii) of the Act. The Government in that case also did not accord its approval for the, petitioner's detention as required by s. 3 (3) of the Act and an order of release was made and served on the detenu who was confined in jail as an under- trial under s. 107//117 of the Code of Criminal Procedure. A fresh order of detention was again passed on the same day, namely, June 25, 1972 the grounds of which were identical. Several contentions were urged before this Court, but that which found favour with it was that the earlier order of detention was either revoked or had expired with the result that unless the detention pursuant to the Order dated June 25, 1972 is passed on fresh facts arising after the expiry or revocation of the earlier order, it must be held to be invalid, in support of this conclusion two decisions of this Court in *Hadi Bandhu Das v. District Magistrate, Cuttack*(2) referred, to earlier, and *Kshetra Gogoi v. State of Assam*(3) decided under s. 13(2) of the Preventive Detention Act (IV of 1950) which is identical with s. 14(2) of the Act were referred to.

The learned Advocate for the respondent-State has made strenuous attempt to distinguish *Masood Alam's* (1) case firstly,, on the ground that since the petitioner was in jail at the time when the first order was served on him and revoked, his subsequent release on bail by the District & Sessions Judge, Gurdaspur, constituted a fresh fact as his release was likely to enable the petitioner to continue his spying activities for Pakistan Intelligence Service or to cross over to Pakistan for divulging the intelligence collected by him concerning vital installations, Military formations and Civil Defence Force to Pakistan authorities which would be highly prejudicial to the security of the State. The argument of the petitioner's Advocate that fresh fact or fact,, must be such as would provide a nexus between the object of the order of detention and the grounds of detention, was sought to be controverted by the State on the ground that the Act made a difference, between the grounds and facts which are two different connotation,, conveying different concepts. It was urged that while ground must have a nexus.

(1) W.P.S. Nos. 469 & 470 of 1972 decided on January 11, 1973.

(2) [1969] 1 SCR 217 (3) [1970] 2 SCR 517 with the object of the order of detention, facts stated therein need not necessarily have that nexus. We find it difficult to accept this distinction. While it is true that in s. 8 of the Act as also in its other provisions ground and facts are used in opposition to each other, they must be taken as referring to two different things. The grounds are conclusions of fact or reasons which have induced the detaining authority to pass the order of detention. Sometimes these are referred to as basic facts. Facts, however, constitute the evidence upon which the conclusions justifying the detention are made. In *State of Bombay v. Atma Ram Sridhar Vaidya* (1), it was observed-"By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts. The conclusions drawn from the available facts will show in which of the three categories of prejudicial acts, the suspected activity of the particular person is considered to fall. These conclusions are the "grounds" and they must be supplied. No

-part of such "grounds" can be held back nor-can any more "grounds" be added thereto. What must be supplied are the "grounds" on which the order has been made and "nothing less." The detenu, however, is not entitled to know the evidence, nor the source of the information, but he must be furnished with sufficient particulars or facts i.e. sufficient details to enable him to make out a case if he can, for the consideration of the detaining authority. Also see *Ram Krishan v. State of Delhi*(2).

There may be facts which are not germane or are not relevant to the grounds justifying the detention and when s. 14 refers to fresh facts it does not refer to facts which are not relevant, but to such fresh facts on which the detaining authority is satisfied that an order of detention should be made. If the fresh facts cannot form the basis for a conclusion on which the detention order can be made, then those facts are not fresh facts which will justify the detaining authority to make an order of detention. If the contention of the learned Advocate for the State that the release on bail of the petitioner by the District & Sessions Judge, constitutes fresh facts which would furnish an opportunity to the detenu to act in a manner prejudicial to the security, of the State or the maintenance of public order, then the same argument can be availed of for any subsequent detention on the same facts and grounds after the detenu has been released on the expiry of the period for which he was detained or after the earlier order of detention has been revoked, because in both the cases, namely, where the Government has refused to confirm the order of detention as well as on the expiry of the period for which the detenu has been detained and the detention order has expired, the likelihood of the detenu continuing to act in any manner prejudicial to the security of the State etc. can be said to exist and those would furnish a cause for making a fresh detention order. A fresh order of detention can only be made if fresh grounds come into existence, after the expiry of revocation of the earlier order of detention. No such fresh order could be made on the 'ground which existed prior to the revocation or expiry of the earlier order of detention. In order to prevent such a contingency Parliament has enacted s. 14 of the Act and this Court dealing with such a contingency in *Masood Alam's* (supra) case already referred to observed :

(1) [1951] S. C.R. 167 at 178.

(2) [1953] S. C. R. 708.

"It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to the camouflage of making a fresh order operative soon after the expiry at the period of detention, as also to minimise resort to detention orders that s. 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made". We do not think that the release of the detenu on bail by the Sessions Court would constitute fresh facts as would justify the impugned detention order, nor is there any substance in the contention that since in the first order of detention the security of the State and the maintenance of public order were mentioned and in the second order merely the security of the State was mentioned, they can be considered as fresh facts. Both the detention orders are passed under s. 3 (1) (a) (ii).....which set out the prejudicial acts under which the suspected actions of the detenu will fall and for which the detention is made, It is immaterial whether the detaining authority is satisfied that the grounds on which the detention is being made for preventing the detenu from acting in any manner prejudicial to the security of the State or the maintenance of public order, or for preventing him from acting in a manner prejudicial to the security of the State alone, because in either case, one of the objects is to prevent the detenu from acting in a manner prejudicial to the security of the State. The variation in the enumeration of the prejudicial acts have nothing to do with fresh facts.

There being no fresh facts on which the impugned detention order is made, that order is invalid and the detention of the petitioner cannot be sustained. In the view we have taken, it is not necessary to deal with the other contentions. The petitioner is directed to be released forthwith.

K.B.N.