Supreme Court of India
Administration Of The National ... vs Prem Singh on 19 January, 1994
Equivalent citations: 1994 (2) SCALE 747, 1995 Supp (4) SCC 252
Bench: S Mohan, M Mukherjee
ORDER

1. This appeal arises against the judgment of the High Court of Delhi rendered in the Writ Petition (Crl.) No. 637/92 dated 1th February, 1993. In and by the said judgment, 40 the High Court has chosen to interfere at the pre-detention stage. Against the respondent the order of detention alone has been passed on 28th August, 1982. The grounds of detention are yet to be served. The High Court has chosen to allow the writ petition and quashed the order on three grounds. (1) the grounds of detention are common with those grounds of detention in the case of Vijay Kumar; (2) Vijay Kumar and other accused were advised to be released by the Advisory Board constituted under Section 8 of the Act; and (3) there is relaxation to bring gold of foreign origin upto a certain extent on payment of certain duty.

2. Aggrieved by this judgment, the Administration of the National Capital of Delhi has preferred this appeal. The learned Counsel Mr. Nambiar on behalf of the appellant strongly relies on 1991 (1) J.T. 549, The Additional Secretary to the Government of India and Ors. v. Smt. Alka Subhash Gadia and Anr. particularly paragraph 536. On these basis it is submitted that this Court has cataloged the grounds for interference at the pre-detention stage. Not one of the grounds mentioned therein would be applicable to the facts of this case. In other words, the case on hand could not be brought within the ambit of these criteria. As a matter of fact, the same position is reiterated while approving of this ruling in State of Tamil Nadu v. P.K. Samsundeen. Disregarding these principles, the High Court had chosen to embark upon new grounds. By that, a new approach totally unwarranted in cases of preventive detention has been made. It is surprising the High Court should state the ground of detention in the case herein and those of Vijay Kumar are common ignoring the vital fact that the grounds of detention as for as the respondent and herein is concerned are yet to be disclosed. This point has been reiterated in the counter affidavit filed on behalf of the appellant before the High Court. Then again merely because Vijay Kumar and other detenus had been advised to be released by the Advisory Board that does not mean in the case of the respondent also, the same could be applied.

3. Lastly it is submitted that the court has clearly misunderstood the policy of liberalisation in relation to import of gold which has not hearing whatever in the case of preventive detention. On these grounds, it is submitted that the order of the High Court be set aside.

4. On opposing this, the learned Counsel for the respondent submits that the case on hand would fall under ground paragraph 3 stated in 1991 (1) J.T. 549 at 556, paragraph 13. In other words, the order of detention is used for wrong purpose. Besides, it is possible that the High Court could have been the grounds of detention of the respondent and compared the same with those of Vijay Kumar and come to the conclusion that the grounds are common. In any event, there is long delay in passing the order. Therefore, no interference is warranted.

5. We have carefully considered the above arguments. It is needless to state that the law in relation to pre-detention is fully covered by the ruling of this Court reported in 1991(1) J.T. 549 at 556 in paragraph 3. In that decision the following grounds are catalogue:

The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such case have been few and the grounds on which the courts have interfered with the at the pre-execution stage are necessarily very limited in scope and number, viz. where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person (iii) that it is sought to be executed against a wrong person (iv) that it is passed on vague extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary power of judicial review into interfere with the detention orders prior to the their education on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents there abused and the perversion the law in question.

6. Unless and until any one of the grounds has been established, the court is powerless to interfere. In other words no interference at the pre detention stage is permitted on any other grounds; otherwise the very object to preventive detention is thwarted. In this connection we also note a stay of detention also had been granted. On a proper occasion we may have to consider the correctness of such orders granting stay. This aspect of the matter need not detain us.

7. We are more than surprised that the High Court in spite of the fact that this ruling was rendered as early as 20th December, 1990, yet as late as 16th February, 1993 should have chosen not even to refer to this decision and found out the extent of its jurisdiction under Article 226 to interfere at the pre-detention stage. After all, Article 226 to interfere at the pre-detention stage. After all, Article 141 of the Constitution does not exist merely for the glorification of the Constitution. In this case, the three grounds which we have mentioned above which prevailed with the High Court for interference in our considered view are totally alien. They cannot allow the handle for interference at pre-detention stage. To put it shortly, the approach the High Court is lay, render legal, we find it extremely impossible to support this order. The stand of the present appellant who figured as respondent in the High Court was the ground of detention as far as the writ Petition is concerned were yet to be served. By what process of reasoning the High court came to be conclusion that the grounds of Vijay Kumar and that the petitioner before it are common is difficult to discuss.

8. As rightly urged on behalf of appellant, merely because the Advisory Board rendered the advice for release of Vijay Kumar and other detenus" "a fortiori" it does not follow the Advisory Board will do the same thing. Even then it is function of the Advisory Board and not a ground for intereference as pre detention stage.

9. The High court has completely mis-understood the scope of liberalisation of policy in relation to import of gold and the conditions under which such import could be made. What is nexus between the policy and the Preventive Detention? Therefore not one of these three grounds on which the High Court choose to interfere at the pre-detention stage could be held to be tenable.

10. Learned counsel for the respondent before as could urge that this case of misuse of power for a wrong purpose. We find this argument has no substance. Nor again is there any delay in passing the order, as we see in the facts and circumstance of this case. Accordingly the judgment of the High Court is set aside. The Criminal Appeal is allowed.