

CRIMINAL WRIT

Before Bhandari and Soni, JJ.

SUNDAR SINGH,—Complainant-Petitioner,
versus

THE STATE,—Respondent.

Criminal Writ No. III of 1951.

1951
Nov. 16

Preventive Detention Act (IV of 1950)—Sections 3 and 11—Whether the order passed under Section 3 should specify the period of detention—Whether the Government should supply grounds of detention to the detenu while confirming or continuing the detention under section 11—Authority making the order, stated—Government—Powers under section 11.

Held,—

- (1) that an order passed under section 3 of the Preventive Detention Act should not specify the period for which the person is to be detained as this period is to be determined by the appropriate Government under the provisions of section 11.
- (2) that it is not necessary for Government when it proceeds to confirm an order of detention and to continue the detention of the persons concerned to supply the grounds on which the detention is being continued.
- (3) that the person or authority making an order of detention under section 3 is the only authority making the order, for the Government which purports to act under the provisions of section 11 merely confirms the order and decides the period for which the person should be detained. It does not make any order of detention.

Madan Lal v. the District Magistrate of Ferozepore (1), dissented.

Petition under Article 226 of the Constitution of India read with section 491, Criminal Procedure Code, praying that the detention of Lala Hari Shah, son of Lala Balkishan, being illegal and in contravention of the provisions of the Preventive Detention Act and of the Constitution of India, he may kindly be ordered to be set at liberty.

H. R. SACHDEVA, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

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ORDER

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BHANDARI, J. Two questions arise for decision in the present case, namely,—

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- (1) Should an order passed under section 3 of the Preventive Detention Act specify the period for which the person concerned is to be detained; and
- (2) Is it necessary for Government, when it proceeds to confirm an order of detention and to continue the detention of the person concerned, to supply the grounds on which the detention is being continued?

The detenu in the present case is one Hari Shah, a resident of the Amritsar District. He was arrested on the 26th June 1951, in pursuance of an order made by the District Magistrate of Amritsar under section 3 of the Act of 1950 and the grounds on which the order was made were communicated to him. He was to remain in detention for a period of three months, i.e., up to the 25th September 1951. On the 30th July 1951 when the order of the District Magistrate was still in force the Punjab Government confirmed the order of detention under section 11 of the statute and directed that the detention should continue up to the 25th December 1951. A petition under Article 226 of the Constitution has been presented on behalf of the detenu and it has been contended that as the order of confirmation and extension of the detention passed by the Provincial Government was not accompanied by any fresh grounds for extending the period of detention the order must be deemed to be void and of no effect.

Section 7 of the Act of 1950 provides that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made and shall afford him the earliest

opportunity of making a representation against the Sundar Singh order to the appropriate Government.

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The learned counsel for the detenu contends that as the District Magistrate ordered the detention of his client up to the 25th September 1951 and as the Provincial Government extended this period up to the 25th December 1951, the detenu was being detained in pursuance of two orders—one passed by the District Magistrate and the other passed by the Provincial Government. He accordingly contends that there were two different authorities by which two different orders were passed and consequently that his client was entitled to receive two different sets of grounds upon which the orders were made. He contends further that as the grounds on which the order of the District Magistrate was based were communicated to the detenu and as the grounds on which the order of the Provincial Government was based were not, he is entitled to be released from custody on the short ground that the provisions of law as contained in Article 22 of the Constitution and section 7 of the Act of 1950 have not been complied with. Our attention has been invited to a pronouncement of this Bench in *Madan Lal v. The District Magistrate of Ferozepore* (1), in which we observed as follows :—

“ Clause (5) of Article 22 states clearly and in unambiguous language that ‘ the authority making the order ’ shall communicate to the detenu the grounds on which the order has been made. This clause does not draw any distinction between one authority and another or between an original order or an order made at a later date. If therefore a person is ordered to be detained by one authority and the period of his detention is extended by another authority, he is entitled to claim as of right that both

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the authorities should supply to him the particulars on which their orders are based. This is obviously a commonsense provision, for it seems to me that when the period for which a person has been ordered to be detained is extended by another authority the detenu is entitled to know the reasons which have prompted the other authority to keep him in detention for a longer period than was proposed by the original authority. Moreover, the fact that the period of detention is extended by an order of a particular Government does not alter the fact that the said Government is 'the authority making the order' in pursuance of which the person is detained during the extended period."

The view that was taken in this decision was that when a detention order is made by District Magistrate under the provisions of section 3 and when the period of detention is extended by the appropriate Government by virtue of an order under section 11, there are two authorities making the order, namely the District Magistrate and the Provincial Government. After hearing the learned Advocate-General we have come to the conclusion that this view is not correct. The person or authority making an order under section 3 is the only authority making the order, for the Government which purports to act under the provisions of section 11 merely confirms the order and decides the period for which the person should be detained. It does not make any order of detention.

The Act of 1950 was designed to secure that a person who is likely to act in a manner prejudicial to the public safety should be arrested and detained without loss of time, that the grounds on which the order of detention has been made and the representation, if any, submitted by the detenu should be examined by an Advisory Board within the period

specified in the statute and that the appropriate Government should, after considering the report submitted by the said Board, either confirm or revoke the order of detention and, if the order of detention is confirmed, should specify the period for which the detention should be continued. There are thus three distinct stages in the life of a detention order, namely (1) the making of the order under section 3, (2) the scrutiny of the case by an Advisory Board (section 9) and (3) action by Government upon the report of the Advisory Board (section 11). Section 3 of the statute does not empower any person or authority to order the detention of a person for a specified period. All that it says is that an order of detention may be made. The Act appears to contemplate that the authorities specified in section 3 should only make an order of detention and leave it to the appropriate Government to specify the period of detention after it has had the opportunity of considering the grounds of detention, the representation, if any, made by the detenu and the report submitted by the Advisory Board. The question whether an order should be confirmed or revoked, and if it is confirmed whether the detention should or should not be continued, is in the sole discretion of the appropriate Government. It follows as a consequence that when a District Magistrate purporting to act under the provisions of section 3 specifies the period for which a person may be detained he acts in excess of the powers conferred upon him by law and appropriates to himself the functions of Government. His order in so far as it specifies the period of detention must therefore be deemed to be void and of no effect. It follows also that if the appropriate Government proceeds to confirm an order of detention under section 11 and to specify the period for which the detention should continue it does not become the "authority making the order" which is required by section 7 to supply the grounds of detention. The authority making the order is the person or authority by which the order under section 3 was originally passed. The Provincial Government which purports to act

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Sundar Singh ^{v.} under the provisions of section 11 is not an " authority making the order " but an authority which is vested with the power to confirm or revoke the order of detention and if the order of detention is confirmed, to specify the period for which the detention should continue in force.

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It will be seen from the above that when the Provincial Government in the present case confirmed the detention order and directed that the detention should continue up to the 25th December 1951 it did not pass a fresh order of detention. It merely confirmed the order which had already been passed by the District Magistrate and determined the period for which the detention should continue in force.

My answers to the questions propounded at the commencement of this judgment are, (1) that an order passed under section 3 of the Preventive Detention Act should not specify the period for which the person is to be detained as this period is to be determined by the appropriate Government under the provisions of section 11, and (2) that it is not necessary for Government, when it proceeds to confirm an order of detention and to continue the detention of the person concerned, to supply the grounds on which the detention is being continued.

The petition fails and is hereby dismissed.

SONI, J. I agree.