CRIMINAL WRIT

Before Gurdev Singh, J.

BALDEV SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Writ No. 70 of 1969.

November 4, 1969

Constitution of India (1950)—*Articles* 22(1) *and* 226—*Criminal Procedure Code* (V *of* 1898)—*Section* 491—*Initial detention of detenu violating guarantee contained in Article* 22(1)—*Subsequent order of remand to custody passed by Magistrate on police report in a criminal case—Writ of Habeas Corpus—Whether can be issued.*

Held, that where the question involved is one of fundamental rights, persons who seek to interfere with them must justify their conduct, and if they rely upon some legal provisions, it is for them to show that those provisions had been duly complied with. The fundamental rights guaranteed to a citizen of India are valuable as is apparent from the fact that they have been guaranteed and protected by the Constitution and made enforceable by recourse to constitutional remedies. Their breach thus cannot be lightly ignored or countenanced. That, however, does not lead to the conclusion that where in breach of the guarantee enshrined in Article 22 of the Constitution, a citizen has been dealt with, then all legal process dealing with him subsequently is *ipso facto* rendered nugatory or cannot be enforced. Hence the validity or otherwise of the detention, while dealing with a petition for writ of *Habeas Corpus* or an application under section 491 of the Code of Criminal Procedure, has to be settled with reference to the time when the return is made in pursuance of the rule issued by the High Court and if at that time the detenu has been remanded to a custody by a Magistrate on police report in a criminal case, the detention is not illegal and a writ or direction in the nature of *Habeas Corpus* cannot be issued. (Paras 18 and 11)

Petition under Article 226 *of the Constitution of India read with Section* 491, *Criminal Procedure Code praying that a writ in the nature of Habeas Corpus or any other appropriate writ, order or direction be issued to respondent Nos.* 2 *to* 5 *directing immediate release of the two detenus namely Sarvshri Gian Singh Rarewala, Ex-M.L.A. and Basant Singh and also directing the respondents that the detenus be produced before this Hon'ble*

Court since the detention and restraint is absolutely illegal and without jurisdi tion.

AJIT SINGH SARHADI WITH N. S. BHATIA, A. S. AMBALVI AND MOHINDERJIT SINGH, ADVOCATES, for the Petitioners.

MELA RAM SHARMA, DEPUTY ADVOCATE-GENERAL PUNJAB AND MR. M. P. SINGH GILL, ADVOCATE, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—In this petition under Article 226 of the Constitution read with section 491 of the Criminal Procedure Code, the prayer is for issuing a writ in the nature of *habeas corpus* directing the respondents, the State of Punjab and the police officials in-charge of police station Beas, to set at liberty S. Gian Singh Rarewala and S. Basant Singh from their alleged illegal detention at the police station Beas in the district of Amritsar. The petitioner S. Baldev Singh, who was Deputy Speaker of the Punjab Vidhan Sabha prior to the last mid-term election, claims to be a friend of the detenus S. Gian Singh Rarewala and S. Basant Singh. S. Gian Singh Rarewala was at one time a Chief Minister in the erstwhile State of Pepsu. S. Basant Singh is a Member of the Legislative Assembly and Secretary of the Punjab Unit of the Swatantra Party.

(2) S. Darshan Singh Pheruman, who undertook a fast to press the claim of the Punjab for the inclusion of the Union Territory of Chandigarh in that State, died on 27th October, 1969, at Amritsar. The next day his dead body was taken to his village Pheruman, about 25 miles away, and cremated there. In accordance with the religious custom his ashes were to be collected on 30th October, 1969. According to the petitioner's allegations, that morning, while he was proceeding to Pheruman to participate in that function accompanied by S. Gian Singh Rarewala in a car and reached Rayya at 8.00 a.m., the Deputy Superintendent of Police, in-charge Beas Police Station (S. S. Bains) respondent No. 4, stopped them and told S. Gian Singh Rarewala that he could not proceed to village Pheruman. On being asked to produce written orders banning his movements or entry in village Pheruman, the Deputy Superintendent of Police is stated to have told S. Gian Singh Rarewala that he was under arrest and asked him to come out of the car. In the meanwhile, Basant Singh, M.L.A., the other detenu named in the petition, came there similarly bound for Pheruman. He was also stopped

and not permitted to go to that village. The Deputy Superintendent of Police asked S. Gian Singh Rarewala to get into a police jeep, which was parked nearby, and directed S. Basant Singh to go to police station Beas and from there to contact the Superintendent of Police on telephone before he could proceed to Pheruman. A police constable was, however, made to sit with him. While leaving, S. Basant Singh asked the petitioner to follow him. Baldev Singh thereupon got into the car in which he had travelled with S. Gian Singh Rarewala and followed the police jeep and the car of S. Basant Singh. On reaching the Police Station, when S. Basant Singh wanted to use the telephone, the Station House Officer, Beas Police Station respondent No. 5 (S. I. Bachan Singh) promptly told him that he was under arrest, but refused to disclose any reason or grounds for his arrest. Throughout the day all three of them remained at the Police Station. About 6.30 p.m., he learnt from the two detenus that the reasons for their detention had not been disclosed to them despite their persistent enquiries, but on the other hand they were informed that "instructions were awaited from above." The petitioner claims that the arrest and the detention of S. Gian Singh Rarewala and S. Basant Singh, in these circumstances, being in violation of Article 22(1) of the Constitution, was illegal, *mala fide* and violative of the fundamental rights. It is further pleaded that the detention is *mala fide* and had been made to restrain the detenus, who are prominent publicmen, from exercising their fundamental right of free speech to criticise the Government of the day. It is alleged that the Chief Minister of Punjab, who is their political opponent, is annoyed with them and it was for ulterior purposes that they have been illegally arrested and detained.

On the 31st of October, 1969, when this petition came up before the Motion Bench, rule *nisi* returnable by 1.45 p.m. on that very day was issued to the Advocate-General, Punjab. Subsequently soon after lunch when the case was placed before me, the Deputy Advocate-General, Punjab, stoutly opposing the prayer for a writ of habeas corpus stated before me that S. Gian Singh Rarewala along with 12 others had been arrested by the police in connection with first information report No. 315, dated the 29th of October, 1969, registered at Police Station, Beas, under section 9 of the Punjab Security of State Act, 1953, because of certain speeches alleged to have been made by them at village Pheruman on the 29th of October, 1969. At that time he disclosed that according to the information which he received on the telephone, the detenus had

been taken to a Magistrate at Amritsar for obtaining their remand, but the Magistrate adjourned the case till 2.00 p.m. on that day as he was busy in some other case at the time the detenus were taken to his Court. Neither the copy of the first information report nor other papers were then in possession of the Deputy Advocate-General. Obviously he was under a handicap as the rule *nisi* had been issued to the Advocate-General alone and that too only that morning. Accordingly, by my order, dated the 31st of October, 1969, I directed the rule *nisi* to issue to the police officers concerned, the Deputy Superintendent of Police and the Station House Officer in charge of the Police Station, Beas, with the direction that the detenus be produced in this Court on the 3rd of November, 1969 (the 1st and 2nd of November being Saturday and Sunday) along with the relevant papers.

(4) When the matter came up before me yesterday, S. Gian Singh Rarewala, one of the detenus named in the petition was produced in police custody and the other detenu S. Basant Singh was also in attendance, but was not in any one's custody. S. Basant Singh put in an affidavit which, broadly speaking, supports the allegations made by the petitioner. He, however, disclosed that after having been detained at Police Station, Beas till 9.30 p.m. on the 30th of October, 1969, he as well as S. Gian Singh Rarewala and S. Teja Singh Akarpuri, Ex-M.P., were told that they could go as there was no case against them. As it was quite late at that time, S. Gian Singh Rarewala expressed his inability to go away, whereupon he was separated from S. Basant Singh, who was taken by the police to the Rest House. S. Basant Singh spent the night there and in the morning, when he found that the police was not to be seen anywhere in the Rest House, he went to the Police Station and was told that he was free to go away as there was no case against him. Basant Singh in his affidavit alleges that the whereabouts of S. Gian Singh Rarewala were, however, not divulged to him despite enquiry.

(5) From what has been said above it is evident that on the 3rd of November, 1969, when the detenus had to be produced in this Court in obedience to its order, S. Basant Singh was no longer in custody. In these circumstances, the petitioner's learned counsel Mr. A. S. Sarhadi, has not sought any relief regarding him and conceded that the prayer for issuing a writ of *habeas corpus*, so far as

S. Basant Singh was concerned, had become infructuous. Accordingly, it is not necessary to consider whether the original arrest and detention of Basant Singh was illegal.

(6) So far as S. Gian Singh Rarewala is concerned he is admittedly in police custody. In defending his detention the respondents produced an order of remand passed by Mr. G. L. Chopra, Judicial Magistrate, Amritsar, dated the 31st of October, 1969. This order of remand has been made when this *detenu* was produced before the Magistrate in connection with first information report No. 315, dated the 29th of October, 1969, of Beas Police Station. The Magistrate had remanded the detenu to the police lock-up till 5th of November, 1969. Both the respondent-police officers have put in affidavits by way of return stating on oath that S. Gian Singh Rarewala was arrested as he was named as one of the accused in respect of whom the first information report No. 315 was recorded at Beas Police Station on the 29th of October, 1969, and they asserted that his detention at present is in pursuance of the remand order passed by the Judicial Magistrate on the 31st of October, 1969.

(7) Mr. Mela Ram Sharma, Deputy Advocate-General for the State of Punjab, has strenuously argued that in view of this remand order passed by a Magistrate of competent jurisdiction, the detention of Gian Singh Rarewala is perfectly legal and there is thus no occasion for issuing a writ of *habeas corpus* in respect of him.

(8) The petitioner's learned counsel Mr. A. S. Sarhadi does not dispute the fact that at present the petitioner is being detained in pursuance of the remand order made by the Magistrate on the police report that S. Gian Singh Rarewala had been arrested and was being detained in connection with the first information report No. 315, dated the 29th of October, 1969, registered at Police Station, Beas. He, however, contends that this remand order cannot operate to turn the illegal detention and arrest of S. Gian Singh Rarewala into legal one or cure the legal infirmity pertaining to his arrest. He submits that in these circumstances the subsequent remand order will not operate as a bar to S. Gian Singh Rarewala being set at liberty if this Court finds that his arrest and detention was not in accordance with law. The precise contentions raised by him, which need consideration, are these :—

(1) That S. Gian Singh Rarewala having been arrested without disclosing to him the reason for his arrest or serving

upon him in any warrant, had been deprived of the protection enshrined in Article 22(1) of the Constitution, and because of this violation of his fundamental rights, his arrest and detention were illegal *ab initio*.

(2) That as he was not produced before the Magistrate within 24 hours of his arrest, his arrest, at the time it was effected, had become illegal being in violation of Article 22(2) of the Constitution.

(3) That assuming that the remand order is valid, it cannot cure the initial defect in the arrest of S. Gian Singh Rarewala as the material point for determining the validity of the arrest of a citizen, is the time when he is arrested and detained and not any subsequent occasion.

(9) From whatever has been said above, it is abundantly clear that the whole matter revolves on the assertion of the petitioner and of the detenu that at the time he was arrested, the reasons for his arrest were not disclosed to him. This averment of fact is, however, vehemently disputed by the respondent police officials concerned with the arrest and detention of the detenu supported by affidavit of A.S.I. Sucha Singh. Thus on a question of fact, there is a keen contest between the parties. The affidavits have been filed by the parties in support of their respective assertions and in this summary enquiry it is somewhat difficult to arrive at a definite finding as to which of the parties is speaking the truth. On the basis of the material that is available, I am, however, inclined to the view that the complaint of the detenu that at the time he was arrested, the reasons for his arrest were not disclosed to him, appears to be correct. Though the petitioner and Sardar Gian Singh Rarewala maintain that they were intercepted by the police at 8.00 a.m. on the 30th of October, 1969, the respondents admit that, in any case, about 10 or 10.30 a.m. that day, he was in their custody. They also admit that S. Basant Singh, M.L.A., who, though originally named as a detenu is no longer before this Court, was with them. It is further admitted by the respondents in their affidavits that S. Basant Singh remained with them at least till the evening of that day. Had the reason for his arrest and detention been disclosed to S. Gian Singh Rarewala or to S. Basant Singh, I cannot imagine that Basant Singh, who, according to the respondents, was never arrested and was free

to go about, would not take any steps either to approach this Court with a petition for *habeas corpus* like the present one or run to Amritsar, hardly 22 miles from Rayya, to move an application for bail on behalf of Gian Singh Rarewala.

(10) In this view of the matter, it is obvious that there has been a violation of the guarantee contained in Article 22(1) of the Constitution. The question that, however, arises for consideration at this stage is whether the subsequent order of remand passed by the Magistrate on the police report that Gian Singh Rarewala had been arrested in a criminal case under section 9 of the Punjab Security of State Act, has to be ignored and, whether in face of that order a writ of *habeas corpus* can be issued. Mr. Ajit Singh Sarhadi, as has been observed earlier, has contended that in dealing with the validity of the detention of a citizen, the Court has to look to the state of things at the time he was taken into custody or arrested and, not to any subsequent event or occasion. He urges that once it is found that the arrest was in breach of the fundamental rights or some legal provisions, no subsequent order passed by any authority can cure the defect and the detenu is entitled to be set at liberty in exercise of the powers of this Court by issuing a writ in the nature of *habeas corpus*. In support of this contention he has placed reliance on *Madhu Limaye* v. *The State*, (1), where while disposing of a similar matter R. P. Khosla, J., observed as follows:—

> "The Learned Assistant Advocate-General for the State had no real answer to the contentions raised but suggested that in any event today (at the time of the hearing of the petition) the detenu was in proper legal custody, for the challan for those offences had meanwhile been put in Court. The submission is wholly untenable. In point of time, the question has to be settled whether at the time of arrest of the detenu, the detention was legal or not."

(11) In this decision no authorities are, however, referred to in support of the dictum that the question regarding the validity of detention has to be settled with reference to the time of the arrest of the detenu, and speaking with respect, I find that the various decisions on the subject do not bear out this dictum. In my

(1) A.I.R. 1959 Pb. 506.

opinion, the weight of the authority is in favour of the view that the validity or otherwise of the detention while dealing with a petition for writ of *habeas corpus* or an application under section 491 of the Code of Criminal Procedure, has to be settled with reference to the time when the return is made in pursuance of the rule issued by the Court. In view of the discordant note struck by Khosla, J., I would have liked to refer this matter to a larger bench but I do not consider it necessary as, in my opinion, the matter is concluded by the pronouncements of their Lordships of the Supreme Court in various cases which do not appear to have been brought to the notice of R. P. Khosla, J., *in Madhu Limaye's case* (1). Even earlier the Federal Court had dealt with this matter in *Basanta Chandra Ghose* v. *Emperor* (2). Spens C. J. delivering the judgment of the Court in that case observed thus:—

> "It was finally contended that as the previous order of this Court directed an enquiry into the validity of the detention under the order of 19th March, 1942, the decision of the High Court must be limited to that question and that it was not open to the High Court to base its decision on the subsequent order of 3rd July, 1944. This contention proceeds on a misapprehension of the nature of *habeas corpus* proceedings. The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings cannot be invoked here. If at any time before the Court directs the release of the detenu, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention, but whether in the face of the later valid order the Court can direct the release of the petitioner."

(12) These observations were relied upon by a Division Bench of this Court (Harnam Singh and Falshaw JJ.) in *Virendra Kumar Tripathi* v. *The Crown* (3). After concluding them, Falshaw J. (as he then was) speaking for the Court observed as follows:—

> "After giving the matter my careful thought, I am of the opinion that the fact that the Chief Commissioner invoked

(2) A.I.R. 1945 F.C. 18.
(3) A.I.R. 1951 Simla 216.

the provisions of sub-section (4) of section 3 of the Act of 1947 in extending the periods of detention of the present *detenus* instead of invoking sub-section (4) of section 3 of the Act of 1949 under which he was empowered to extend the periods of detention in exactly the same way does not invalidate the orders in question, and that in any case the detenus are now being validly detained under the subsequent orders further extending their detention in which correct provision of law was invoked."

(13) In *Ram Narayan Singh* v. *The State of Delhi and others* (4), their Lordships ruled that in *habeas corpus* proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. Mr. Ajit Singh Sarhadi has, however, contended that this authority, far from supporting the contentions raised by the Deputy Advocate-General, goes in the petitioner's favour as in that case it was found that though initially the arrest and detention of the detenu was valid, subsequently it became invalid because no order remanding him to custody was made. He argued that since at the time the return was filed their Lordships found that the custody of the detenu was not valid being in violaton of the legal provisions, they granted the writ of *habeas corpus*, but in the case before us, which is just the reverse, the custody of S. Gian Singh Rarewala was *ab initio* void and in breach of the constitutional provisions and thus could not be validated nor the infirmity cured by any subsequent order of remand. According to the learned counsel, though the Magistrate had the power to remand S. Gian Singh Rarewala on being satisfied that he was arrested in connection with a case registered against him, he could not, by granting such remand, validate his earlier illegal detention or arrest. Reliance in this connection is placed upon *The Reverend Thomas Pelham Dale's case* (5) wherein at page 461 Brett L.J., observed as follows:—

"Then comes the question upon the *habeas corpus*. It is a general rule which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another, he must take care to do so by

(4) A.I.R. 1953 S.C. 277.
(5) 6 Q.B. 1880-81 376.

steps, all of which are entirely regular and that if he fails to follow every step in the process with extreme regularity the Court will not allow the imprisonment to continue."

(14) L. J. at page 469, dealing with the same matter, said:—

"I quite agree with Brett L. J., that when persons take upon themselves to cause another to be imprisoned, they must strictly follow the powers under which they are assuming to act, and if they do not, the person imprisoned may be discharged, although the particulars in which they have failed to follow those powers may be matters of mere form."

(15) The facts of the case with which the Court of Appeal was dealing were, however, different from those before us. There cannot be any serious quarrel with the proposition that if a citizen is sought to be deprived of his liberty, then the authorities concerned must act in accordance with law. Though the learned Deputy Advocate-General has contended that the provisions of Article 22 of the Constitution should not be strictly construed or applied, I agree with Mr. Sarhadi that there is no warrant for such a contention.

(16) In *Makhan Singh Tarsikka* v. *State of Punjab* (6), Patanjali Sastri C. J., while accepting a petition for release from unlawful custody under Article 32 of the Constitution, said:—

"It cannot be too often emphasized that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected."

(17) Again, in *Ram Narayan Singh* v. *The State of Delhi and others* (4), the learned Chief Justice, while laying stress on the observance of legal requirements for a valid detention, observed:—

"This Court has often reiterated before that those, who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law."

(6) A.I.R. 1952 S.C. 27.

(18) Where the question involved is one of fundamental rights, persons who seek to interfere with them must justify their conduct, and if they rely upon some legal provisions, it is for them to show that those provisions had been duly complied with. The fundamental rights guaranteed to a citizen of India are valuable as is apparent from the fact that they have been guaranteed and protected by the Constitution and made enforceable by recourse to constitutional remedies. Their breach thus cannot be lightly ignored or countenanced. That, however, does not lead us to the conclusion that where in breach of the guarantee enshrined in Article 22 of the Constitution a citizen has been dealt with, then all legal process dealing with him subsequently is *ipso facto* rendered nugatory or cannot be enforced.

(19) In the instant case, the position is, as disclosed by the respondents, that a case under section 9 of the Punjab Security of State Act has been registered against several persons, including the detenu, S. Gian Singh Rarewala. The first information report in that case was recorded on 29th October, 1969, as appears from the papers produced by the respondents. Admittedly, S. Gian Singh Rarewala was arrested on the following day. The first information report shows that he was specifically named in the first information report recorded a day earlier. Even if it be conceded for a moment, as urged on behalf of the detenu, that at the time of his arrest on 30th October, he was not informed in what connection he was being taken into custody, the fact remains that a case under section 9 of the Punjab Security of State Act had been registered against him and he was wanted in that case. There is no dispute that it is a cognizable offence, and the respondents-police officials could arrest him even without a warrant. In these circumstances, when the respondents claimed to have arrested him in connection with that case, they had to produce him before a Magistrate of competent jurisdiction within 24 hours. Though in this case he was not produced before the Magistrate within that time and there was some delay in taking him to the Court of the Magistrate, we find that the Magistrate, before whom the detenu was produced, remanded him to the judicial lock-up after considering the prayer made on his behalf for admitting him to bail. That order of remand expires tomorrow. Admittedly, it has not been challenged in a superior Court, though in the course of arguments before me it has been, in pasing characterised as illegal on the ground that the original arrest was illegal and could not be validated. In these circumstances, I am constrained to hold that S. Gian Singh Rarewala is not in illegal detention. Accordingly,

the writ or direction sought for in the nature of *habeas corpus* cannot be issued for his release. He can seek his remedy according to law in the case in connection with which he is stated to have been arrested. Nothing said herein should be taken as expression of opinion on the merits of that case. The petition is, accordingly dismissed, and the detenu is directed to be taken to the custody from which he has been produced.

N. K. S.

APPELLATE CIVIL

Before R. S. Narula, J.

AJIT SINGH,—*Appellant.*

versus

MADHA SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 951 of 1960

November 11, 1969

Indian Succession Act (XXXIX of 1925)—Section 63—Disputed wills—Appreciation of evidence in proof thereof—Important principles as to—Stated.

Held, that in appreciating the evidence in support of disputed wills, the following principles are important. (i) The burden of proving a disputed will lies on the person who propounds it; (ii) if there are no suspicious circumstances surrounding the execution of the will, it is sufficient to discharge the initial onus by proving the signature or thumb-impression of the testator as required by law and by proof of testamentary capacity of the testator; (iii) in a case where the execution of the will is surrounded by suspicious circumstances or if the will is not a natural will in the circumstances of the case, the propounder must explain and remove the suspicion in order to entitle the Court to accept the will as genuine; (iv) even if no plea is taken by the caveator or the person contesting the genuineness of the will, a duty is cast on the propounder to satisfy the conscience of the Court about the genuineness of the will where the circumstances of the case give rise to doubts or suspicions; (v) what would give rise to suspicion in the mind of the Court would depend on the facts and circumstances of each particular case. One of the circumstances which has almost always taken as capable of giving rise to suspicion to the effect that the will does not express the mind of the testator is the taking of a prominant part in the execution of the will by the propounder himself on