

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.7832 of 2015

Date of Decision: May 29, 2015

Anoop Singh @ Mahna S/o Shinda Singh R/o Gali No.1, Jawahar Nagar,
Mehta Road, Amritsar

...Petitioner

Versus

State of Punjab through Secretary, Department of Home Affairs & Justice,
Government of Punjab, Main Secretariat, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Salathia, Advocate
for the petitioner.

Ms. Puneet Kaur Sekhon, Additional Advocate General,
Punjab.

Mr. Saurabh Khurana, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court praying for quashing of the order dated 21.11.2014 (Annexure P-1) passed by the Deputy Commissioner of Police-cum-Executive Magistrate, Amritsar-respondent No.3 by which the petitioner has been ordered to be detained in Central Jail Amritsar and the order dated 12.03.2015 (Annexure P-2) passed by the District Magistrate, Amritsar, rejecting the appeal of the petitioner. Petitioner has also prayed for fixing liability upon the erring Government officials including respondent No.3 and for grant of adequate compensation on account of he being illegally detained depriving him of his personal liberty without following due procedure established by law.

2. Petitioner has approached this Court by way of the present writ petition alleging illegal detention on the basis of the impugned orders

passed by respondents 2 and 3 asserting that the same are not in accordance with law and the procedure as prescribed under the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').

3. Petitioner is a habitual offender and is involved in illegal trade of illicit liquor against whom five cases have been registered under the Punjab Excise Act, 1914 (hereinafter referred to as 'Excise Act') at Police Station Maqboolpura, District Amritsar, out of which in two cases, he has been convicted and the other three are under investigation. A report bearing No.33 dated 01.06.2014 under Section 41(2)/110 of the Criminal Procedure Code was presented by the Station House Officer (SHO), Police Station Maqboolpura, Amritsar and the petitioner was produced before the Additional Deputy Commissioner of Police-cum-Executive Magistrate on 25.07.2014. On the said date, petitioner was heard and after perusal of the records and the statement of the witnesses, he was bound by respondent No.3 for good behaviour in future on submission of surety bond amounting to ₹2 lakhs for a period of one year. Petitioner executed a bond for good behaviour for the said amount in compliance with the order dated 25.07.2014 (Annexure R-2).

4. After the execution of the said bond for keeping good behaviour, which was in Form No.3, as contained in Second Schedule to the Cr.P.C., F.I.R. No.117 dated 21.10.2014 was registered at Police Station Maqboolpura, Amritsar against the petitioner under Section 61 of the Excise Act as he was found in possession of 36 bottles of English whiskey brand 'CASH'. In the said F.I.R. though the petitioner was released on bail by the Investigating Officer being a bailable offence. However, a report dated 27.10.2014 was received from the SHO, Police Station Maqboolpura,

Amritsar by the Additional Deputy Commissioner of Police-cum-Executive Magistrate, Amritsar, wherein mention of DDR No.33 dated 01.06.2014 was made and it was stated that since F.I.R. No.117 dated 21.10.2014 stands registered against the petitioner during the period when the petitioner was required to maintain good conduct and behaviour as per the order dated 25.07.2014 (Annexure R-2), action be taken against him.

5. The Additional Deputy Commissioner of Police, City I, issued warrant of arrest against the petitioner as also notice to the sureties by order dated 29.10.2014 for 20.11.2014. As the warrant and notice had been received unexecuted, fresh warrant against the petitioner and notice to the sureties were issued for 04.12.2014. Petitioner was arrested by the SHO, Police Station, Maqboolpura, Amritsar City and was produced before respondent No.3 on 21.11.2014. On that very day, respondent No.3, taking the aid of the provisions of Section 122 Cr.P.C., ordered detention of the petitioner for the remaining period of bond, for which the petitioner was bound down to maintain good conduct in exercise of the powers under Section 122(1)(b) of the Cr.P.C. (Annexure P-1). Petitioner was accordingly lodged in Central Jail, Amritsar on 21.11.2014 and since then is in judicial custody.

6. Petitioner challenged this order of detention dated 21.11.2014 (Annexure P-1) by filing an appeal before the District and Sessions Judge, Amritsar under Section 373 of Cr.P.C., which was dismissed on 12.01.2015 (Annexure P-5) as not maintainable. Petitioner preferred an appeal before the District Magistrate-respondent No.2 on 02.02.2015, which was decided by order dated 12.03.2015 (Annexure P-2) upholding the order dated 21.11.2014 passed by respondent No.3.

7. Petitioner has now approached this Court by way of present writ petition challenging the initial order of detention and the order of dismissal of appeal on the ground that the impugned orders cannot sustain as the same are in violation of the provisions as contained under Section 122(1)(b) of Cr.P.C. by asserting that an order under these provisions can only be passed qua a person, who having executed a bond for keeping peace pursuant to an order passed by the Magistrate under Section 117 Cr.P.C. as to the satisfaction of the Magistrate, committed breach of bond and not to a person, who has executed a bond with or without surety for maintaining good conduct in pursuance to an order passed by the Magistrate. Counsel for the petitioner thus contends that the detention of the petitioner in pursuance to the order dated 21.11.2014 (Annexure P-1) cannot be sustained. Assertion has also been made that the petitioner has been deprived of his life and personal liberty without following the procedure as laid down under law, which clearly amounts to violation of Article 21 of Constitution of India and, therefore, is entitled to compensation for illegal detention.

8. Upon notice having been issued, reply on behalf of respondent No.3 has been filed in Court, wherein it has been stated that as per the provisions contained under Section 122(1)(b) of Cr.P.C., the powers have been rightly exercised. It has been contended that as per the provisions contained in Sections 110, 111, 117 and 122 of Cr.P.C., it is amply clear that an Executive Magistrate in exercise of his powers under Section 110 Cr.P.C. can ask a person, who happens to be a habitual offender, to furnish a bond with or without surety in order to ensure good behaviour for such period not exceeding three years. Under Section 111 of Cr.P.C., the powers

to make an order for execution of the bond is stipulated and as per Section 122 Cr.P.C., if a person has executed a bond for keeping peace under Section 117 Cr.P.C., is proved to have committed breach of the bond, the Executive Magistrate can order that person to be arrested and detained in prison until the expiry of the period of bond. It has further been stated that there are no *mala fides* alleged against respondent No.3 and the said respondent has unnecessarily been impleaded by name when he had passed the impugned order dated 21.11.2014 (Annexure P-1) in his official capacity of an Executive Magistrate.

9. No separate reply has been filed by respondents 1, 2 and 4 and the counsel for the State has made a statement that she adopts the reply, which has been filed by respondent No.3 qua respondents 1, 2 and 4.

10. Counsel for the parties have made their submissions in accordance with the pleadings, which have been referred to above. Counsel for the respondents have referred and relied upon the judgment dated 02.02.2015 passed by a Coordinate Bench in *Criminal Writ Petition No.1738 of 2014* titled as *Tarsem Kaur Versus State of Punjab and others*, where in similar facts and circumstances the writ petition was dismissed.

11. On hearing the respective arguments raised by the counsel for the parties and on going through the records of the case, this Court is of the considered view that the impugned orders cannot be sustained as the same are in violation of the powers as conferred upon respondent No.3 as provided under Section 122(1)(b), for the following reasons.

12. Chapter VIII of the Cr.P.C. deals with security for keeping peace and for good behaviour. This Chapter primarily is in the nature of conferring powers on the authorities for prevention of crimes and

disturbances of public tranquillity and breach of peace. It is thus preventive in nature and may or may not be based on any overt act but can be on the potential danger, which is likely to take place and can be averted. The provisions contained in this Chapter, therefore, are for maintaining public order and peace, which is in the interest of the general public. The constitutional validity of this Chapter was questioned and the same stands adjudicated upon by the Constitutional Bench of the Supreme Court in **Madhu Limaye and another Versus Sub Divisional Magistrate, Monghyr and others, 1970(3), SCC 746**, where the Hon'ble Supreme Court has divided this Chapter into three Divisions. In Division A, it was said that it was for security for keeping peace on conviction and consisted of only one Section i.e. Section 106. Division B consists of 12 Sections i.e. Sections 107-110 and 112-119, which applies to cases other than those mentioned in Section 106. Division C relates to proceedings subsequent to Section 118. Section 120 fixes the terminus qua the period for which the security is required. Section 121 gives the contents of the bond and the conditions under which there is breach of bond. Section 120 empowers the Magistrate to reject sureties but only after inquiry and recording the evidence and his reasons for rejection and Section 123 gives powers to commit a person to prison or to be detained in prison, if already there, for the duration mentioned in the bond. In para 47, while upholding the constitutional validity of this Chapter, it has been held as follows:-

“47. The gist of the Chapter is the prevention of crimes and disturbances of public tranquillity and breaches of the peace. There is no need to prove overt acts although if overt acts have taken place they will have to be considered. The acting being preventive is not based on overt act but on the potential danger to be averted. These provisions are thus essentially conceived in the interest of public

order in the sense defined by us. They are also in the interest of the general public. If prevention of crimes, and breaches of peace and disturbance of public tranquillity are directed to the maintenance of the even tempo of community life. there can be no doubt that they are in the interest of public order. As we have shown above 'public order' is an elastic expression which takes within it various meanings according to the context of the law and the existence of special circumstances. This power was used in England for over 400 years and is not something which is needed only for administration of colonial empires. Its need in our society today is as great as it was before the British left. We find nothing contrary to article 19 (1) (a), (b), (c) and (d) because the limits of the restrictions are well within Clause (2), (3), (4) and (5). We accordingly hold the Chapter as explained by us to be constitutionally valid”.

13. In the present case, we are primarily concerned with the provisions contained in Section 122(1) of Cr.P.C. The same reads as follows:-

“122. Imprisonment in default of security.-(1) (a) *If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.*

(b) *If any person after having executed a bond, with or without sureties **for keeping the peace** in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law”.* **(emphasis applied).**

14. A perusal of the above would show that as per sub-section 1(a), the same applies to a person, who has been ordered to give security under Section 106 or Section 107 but does not give such security on or before the date within which period the security is to be given/commences. Clause (1) (b) thereof deals with a person, who having after executed a bond with or without sureties in pursuance to an order of the Magistrate under Section 117, commits breach of bond. It is to be noted that the person to whom this clause applies is where he has executed a bond for keeping peace in pursuance to an order under Section 117 of Cr.P.C., apart from providing for the other requirements, which have to be fulfilled for ordering the arrest and detention in prison of that person until the expiry of period of bond. This Section thus applies where a bond has been executed by a person for keeping peace and not for any other type of bond such as bond for good behaviour etc.

15. Section 117 of Cr.P.C. provides for two types of bonds i.e. (i) for keeping peace (ii) for maintaining good behaviour. Section 117 of Cr.P.C. reads as follows:-

“117. Order to give security.- *If, upon such inquiry, it is proved that it is necessary **for keeping the peace or maintaining good behaviour, as the case may be**, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:*

Provided that-

- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;*
- (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;*
- (c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties”. **(emphasis applied).***

16. A perusal of the above would show that if upon holding an inquiry, it is proved to be necessary for seeking a bond for security, the Magistrate shall make an order for executing a bond of the nature of keeping the peace **or** maintaining good behaviour depending on the case. The discretion is thus with the Magistrate but that also is qualified depending on the case.

17. Section 110 of Cr.P.C. deals with security for good behaviour from habitual offenders and, therefore, it cannot be said that the petitioner, who is a habitual offender could not have been called upon to execute a bond and was accordingly ordered to submit a bond for good behaviour for a period of one year on security of an amount of ₹2 lakhs by order dated 25.07.2014 (Annexure R-2). This order was accepted by the petitioner and the said bond was executed by the petitioner along with two sureties for a period of one year on Form No.13 as provided in the Second Schedule of the Cr.P.C. It is not disputed that after the execution of the bond, F.I.R. No.117 dated 21.10.2014 under Section 61/1/14 of the Excise Act was registered at Police Station Maqboolpura, Amritsar against the petitioner and 36 bottles of English whiskey mark 'CASH' was recovered from him and the report dated 27.10.2014 (Annexure R-3) was submitted by the SHO, Police Station Maqboolpura, Amritsar to the Assistant Commissioner of Police-cum-Executive Magistrate, Amritsar. The same reads as follows:-

“Sir,

It is submitted that the aforesaid person is a habitual offender. Therefore against him under report No.33 dated 1.6.14 U/S 110 CRPC a kalandara had been prepared and given in your court for consideration. That during consideration your court had restrained the respondent for good living for a period of one year tadadi Rs.2,00,000/- on

*25.7.14. This person during such period of restraint had again committed an offence. While registering case FIR No.117 dated 21.10.14 u/s 61/1/14 Ex Act Police Station Mabqoolpura, Amritsar against him, 36 bottles English whisky make Cash has been recovered from him. This person had by doing offence again during the restrain period had violated the court orders. **Therefore, it is requested vide this application that as per rules the recovery of the bond amount may be ordered to be recovered from the aforesaid respondent Anoop Singh and his sureties** so that he may be stopped from committing offence time and again.*

Enclosed:-

- 1. Photocopy FIR No. 117/14*
- 2. Photocopy of Punishment Slip” (emphasis applied).*

18. A perusal of the highlighted portion above, would show that the request is for recovery of the bond amount only and not for detention of the petitioner. This was in accordance with the provision of the statute, as for violation of a bond for good behaviour, the bond amount can be forfeited as per the terms of the bond submitted in Form 13 as prescribed in Second Schedule of the Cr.P.C. It has been held in earlier part of this order that Section 122(1)(b) applies only in cases where the bond has been executed for keeping/maintaining peace and not to any other type of bond executed by a person, the impugned orders cannot sustain. In the light of the statute providing for no power under Section 122 Cr.P.C. for ordering detention of a person, who violates the bond conditions for good behaviour, the detention order of the petitioner dated 21.11.2014 (Annexure P-1) passed by respondent No.3 is without application of mind or considering the provisions of the statute. The same is thus, without any authority of law.

The detention of the petitioner is, therefore, declared illegal and in gross violation of the fundamental right enshrined in Article 21 of the

Constitution of India providing for protection of life and personal liberty of a person, which shall not be deprived except according to procedure established by law. In the present case, it has been so done.

19. It is now a settled principle of law by various judgments passed by the Hon'ble Supreme Court such as in *D.K. Basu Versus State of West Bengal (AIR 1987 SC 610)* that compensation may be awarded by the High Court in case of violation of fundamental rights of a person with a word of caution that jurisdiction under Article 226 of the Constitution of India cannot be used as a substitute for enforcement of rights and obligations, which could be enforced efficaciously through ordinary process of Courts. However, where the Court comes to a firm conclusion that there has been a violation of a fundamental right(s) of a person(s), awarding compensation is permissible.

20. As the detention of the petitioner has been found to be illegal and being in violation of Article 21 of the Constitution of India and there are no disputed questions of fact, the petitioner is held entitled to compensation for infringement/violation of his fundamental right of life and liberty. Since the petitioner is under illegal detention in Central Jail, Amritsar from 21.11.2014 till date, he is held entitled to compensation amounting to ₹5 lakhs, which shall be paid by the State of Punjab to the petitioner within a period of two months from today. As there are no *mala fides* alleged against respondent No.3 nor does there appear to be any intentional overt act on the part of the said respondent in passing the impugned order dated 21.11.2014 (Annexure P-1), he is not held personally liable to pay the above awarded compensation.

21. Counsel for the respondents have relied upon the judgment

passed by this Court in Tarsem Kaur's case (supra), where the facts are almost the same as also the impugned order passed by the Deputy Commissioner of Police, Amritsar, but the same would not apply to the case in hand as the Court had held that the petition was preferred by the wife of the alleged detenu, who was not competent to challenge the order as she had no authority to do so. It was also observed that the statutory appeal was pending before the District Magistrate-cum-Commissioner of Police, Amritsar under Section 123 Cr.P.C. It appears that the distinction and effect of a bond for good behaviour and a bond for maintaining peace was not stressed before the Court because of which the Court had proceeded on the assumption that there was breach of condition of bond for keeping peace and, therefore, the detention in prison of the detenu Buta Singh (husband of the petitioner) was in accordance with Section 122(1)(b) of the Cr.P.C., whereas the bond was for maintaining good behaviour. The said judgment, therefore, would be *per incuriam* and will not have a binding effect.

22. In view of the above, this writ petition is allowed. The impugned order dated 21.11.2014 (Annexure P-1) as also the order dated 12.03.2015 (Annexure P-2) are hereby quashed.

23. Direction is issued to the Superintendent, Central Jail, Amritsar to release the petitioner from custody and he be set at liberty forthwith, if not wanted in any other case.

24. Registry to carry out the order and send the release order immediately i.e. today itself.

May 29, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE