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Neutral Citation Number: [1983] EWHC 1 (QB)

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

13 December 1983

B e f o r e :

MR JUSTICE WOOLF

Between:

**THE QUEEN ON THE APPLICATION OF Hardial
Singh**

Claimant

- and -

Governor of Durham Prison

Defendant

**T Munyard (instructed by Bradford Law Centre) for the applicant.
A Collins (instructed by Treasury Solicitor) for the respondent**

HTML VERSION OF JUDGMENT

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Woolf J:

1. This is an application for habeas corpus by Mr Hardial Singh which, in my view, raises an issue of considerable importance as to how long it is proper for the Home Secretary lawfully to detain an

individual in prison pending their removal from this country, pursuant to the deportation machinery.

2. The applicant is an Indian national who was born in India on 19 December 1957. He entered this country on 14 December 1977, just before his 20th birthday. He was given indefinite leave to remain in the United Kingdom and there is no suggestion whatsoever that he did otherwise than enter this country lawfully, and there is no suggestion that he has not been lawfully in this country since 1977.
3. However, he committed two offences of a criminal nature which brought him before the courts, one of burglary, which was dealt with in 1980, and a further offence of burglary which was dealt with in 1982. In relation to the second offence he was sentenced to 12 months' imprisonment. In addition, the earlier sentence of imprisonment which had been imposed upon him, but suspended, was brought into force, the consequence being that he had to serve a total of two years' imprisonment. In the ordinary way, because prior to his being dealt with for the second offence he had been in custody, he would have been released on 20 May 1983.
4. However, in January 1983, while serving at an open prison, he had a visit from immigration officers and he says that he then realised, although there had been no recommendation for deportation by the court, that he might be deported. He became distressed and he absconded from prison. He was arrested two weeks later and he then lost remission in consequence of his escaping from prison. His new date of release was 12 August 1983. He was, in fact, due to be granted parole on 20 July 1983 and if it had not been for the action taken by the Home Office he would have been released from Durham Prison on that date. In fact, he is still at Durham Prison and he is being held in Durham Prison in conditions which he finds distressing. He is sharing a cell with two others. He is treated in the same way as a prisoner on remand is treated. He therefore does not take part in any work activities and remains locked in a cell for 23 hours a day. The reason why he is being detained is that on 4 March 1983 the Secretary of State made a decision to make a deportation order in respect of the applicant on the ground that the Secretary of State deemed his deportation to be conducive to the public good. The reason for the Secretary of State taking that view was, undoubtedly, the convictions to which I have made reference.
5. The applicant accepts that the Secretary of State perfectly properly came to that conclusion. He had a right of appeal, which right of appeal expired on 18 March, but he did not exercise that right of appeal. Having made a decision to deport the applicant, the next stage in the machinery is the making of a deportation order. That was done and the deportation order was served on the applicant on 16 June 1983, while he was still serving his prison sentence.
6. Under Schedule 3 of the Immigration Act 1971 the Secretary of State has the power to detain an individual who is the subject of a decision to make a deportation order, under 2(2) of the Schedule, pending the making of the deportation order. That power requires the person to be detained under 2(3) after the making of a deportation order and pending the removal of the person from the United Kingdom.
7. Since 20 July 1983, the applicant has been detained under the power contained in 2(3) of the third Schedule of the Immigration Act 1971. Although the power which is given to the Secretary of State in paragraph 2 to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorize detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being impliedly limited to a period which is reasonably necessary for that purpose. The period which is reasonable will depend upon the circumstances of the particular case. What is more, if there is a situation where it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Act for removing persons who are intended to be deported within a reasonable period, it seems to me that it would be wrong for the Secretary of State to seek to exercise his power of detention.
8. In addition, I would regard it as implicit that the Secretary of State should exercise all reasonable expedition to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time. In this connection I have been referred to two authorities which

give some assistance. The first is the case of *R. v. Governor of Richmond Remand Centre, Ex Parte Asghar* [1971] 1 WLR 129. The facts of that case are really of no assistance but, in the course of giving judgment, the Lord Chief Justice, at page 132, said this:

"The matter in my judgment does not end there, because, even if I were wrong in that, and valid directions were given, the question remains whether, pursuant to paragraph 4(1), the applicants continued thereafter, that is after the directions, to be held pending removal in pursuance of such directions. It quite clearly contemplates, of course, that there will be some interval of time between the giving of the directions and their implementation, and for that period of time there is authority to detain. But when one turns to the facts of this case, the reality of the position is that the applicants were being detained pending the trial at the Central Criminal Court at which they were required to give evidence. Accordingly on that second ground I think that detention was not justified.

"Mr Slynn has argued very forcibly that of course the period contemplated that may elapse between the giving of the directions and the actual removal must be a reasonable period. He says here that in all the circumstances it was reasonable for the Secretary of State to require the detention of these two men pending the completion of the trial at the Central Criminal Court.

"Much as I wish I could accede to that argument, it does seem to me that while a reasonable time is contemplated between the giving of the directions and the final removal, that is a reasonable time necessary to effect the physical removal, the truth of the matter is that the Home Office naturally desires to do nothing which will interfere with the trial. One sympathises with this object, but of course it can be achieved, by giving these applicants conditional permits. There are obvious practical reasons why this course is not adopted, because as experience has shown, nothing may ever be seen of the applicants again."

9. The other case, which is unreported, *re: Sital Singh*, 8 July 1975, was another decision of the Divisional Court. The judgment of the court in that case was given by Milmo J. It concerned a suspected illegal entrant. The Secretary of State had authorized the removal of that illegal entrant on 24 April 1975. The matter came before the court on 8 July 1975, some two and a half months later. The applicant had, however, been in custody since 17 March, three and a half months prior to the decision of the court.

10. In giving judgment the learned judge said:

"The Court is satisfied that everything that can be reasonably done by the Secretary of State for Home Affairs to urge the Indian High Commission to produce a travel document has been done and is being done."

In those circumstances the court said:

"It may be that a case will arise when the detention awaiting deportation is excessive, and when that case does arise it will be considered. But in the judgment of this Court the present case falls far short of that mark."

11. The only other feature that I would draw attention to of that case is that the court was informed by counsel that a communication had been received from the High Commission saying that a reply to the application for a travel document relating to the applicant would be received within the next ten days.

12. Mr Munyard submits that the facts of this case are very different from that case. First of all, I accept that there is a real distinction between the *Sital Singh* case and this case in that there the applicant was an illegal entrant who should never have been in this country at all. That cannot be said of the present applicant. In addition, it is submitted that in that case the court was satisfied that everything that can be reasonably done by the Secretary of State had been done. I am bound to say that in this case I am not so satisfied. The Home Office have filed evidence which refers, first of all, to the interview which took place on 24 January 1983. It is said he then claimed that his passport was in the custody of the

Leicester police, but that was untrue. Enquiries were made at various addresses in Bradford but the passport was not discovered.

13. The matter then goes straight to 7 September 1983 where the deponent, on behalf of the Home Office, points out that the Durham police reported they were having difficulties in obtaining a travel document for the applicant, and therefore could not proceed with the deportation at that time. I know not the precise nature of those difficulties, but I anticipate they are the usual difficulties, because the Indian High Commission were unable to make documents available.
14. From 7 September we go straight to 17 October. It is recorded that, on 17 October, the Durham police reported that the Indian High Commission were making enquiries in relation to establishing the applicant's identity. No travel document was forthcoming at that time.
15. On 24 October, so far as I am aware, there took place the first communication directly between the Home Office and the Indian High Commission. There was a telephone call on that day with regard to travel documentation. The Home Office were asked by the High Commission to give further information concerning the district of birth of the applicant. I am told this request was conveyed to the Durham police, but I am not told whether or not the Durham police complied with that request.
16. On 10 November the only letter was written by the Home Office to the High Commission. It concerned not only the applicant, but a few other persons in a similar predicament. It read:

"I understand that a number of requests have been made to officials in the High Commission by the police and officers in our Deportation Machinery Group for the requisite documentation, but so far without success. These three men have been detained well beyond the normal period and we are anxious to avoid any further untoward delay in their departure, especially since they all express a wish to return to India as soon as possible."

There has been no reply to that letter and, apart from the fact I was told by counsel on behalf of the Home Office that there was an enquiry made yesterday of the Indian High Commission, apparently nothing has occurred since, either in the way of an enquiry by the Home Office, or any action or activity on the part of the Indian High Commission.

17. The applicant had been taking what steps he could to achieve a satisfactory resolution of his problem. He is quite prepared to return to India. He has been in touch with a member of parliament who has been in touch with the Minister of State. The Minister of State answered a letter from that member of parliament, dated 11 October, by a letter dated 2 November. It was pointed out in the letter by the minister that he did not feel justified in authorizing Mr Singh's release from detention pending his removal to India. The minister said, having regard to his convictions and the fact he had absconded, that he took the view that this was not a case where, if the applicant were released, he would surrender at a later stage.
18. Mr Collins on behalf of the Home Office points out the difficulties that the Home Office are under. If they sought to remove this man then the probabilities are that he would not be accepted in India, or by any other country, so he would merely be returned to this country and if this country did not accept him on his return, he would pass to and fro, back and forth. Mr Collins has also pointed out the problem of trying to achieve a more expeditious result from the Indian High Commission.
19. I fully recognize and appreciate these difficulties, but it does seem to me that on the limited material which is before me the Home Office have not taken the action they should have taken and nor have they taken that action sufficiently promptly.
20. The question of deporting this man has clearly been under consideration at least since January. Apparently, no direct action was taken by the Home Office until October of this year. The matter was left in the hands of the Durham police since October. It does seem that more activity could have taken place, particularly bearing in mind that the applicant's solicitors had made it abundantly clear that if no action was taken they were proposing to apply to this court. What is more, there is the disturbing fact

that the applicant had become distressed by his continuing detention and had made an attempt to take his own life.

21. If the matter ended there, for my part, I would regard this as a case where this applicant was now entitled to a writ of habeas corpus, or an order for his release. I would take the view that the implicit limitations imposed on the power of detention contained in the Act had not been complied with. However, I am told by Mr Collins that the affidavit of the applicant was only received by the Home Office yesterday, that their evidence had to be prepared with great expedition for this hearing and that further material might be able to be put before this court, in particular as to what is the position in relation to the documentation which has been requested from the Indian High Commission. He asked for the matter, therefore, to be further adjourned for seven days. I am not prepared to grant an adjournment for seven days but, with some hesitation, I am prepared to grant an adjournment until Friday.
22. In taking that course, I have in mind that if it is shown to this court that the applicant is due to be removed within a very short time indeed, then it would be proper for him to remain in detention for that short time. But if, when the matter comes before me on Friday, there is no intimation given to me on behalf of the Home Office that he will be so removed, this is a case where he should be released unless, having taken advantage of the adjournment, the Home Office are in a position to put before the court evidence which reveals a wholly different situation from that indicated by the evidence which is at present before me.
23. Therefore, in those circumstances, I grant that limited adjournment, taking the view that a very short additional period of further detention will not result in such an injustice to the applicant as requires me to refuse the Home Office an opportunity to file further evidence, bearing in mind that they can reasonably say that the late service upon them has not given them proper time to put their case in order.

Adjournment granted.

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