
(2019) 05 RAJ CK 0061

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 220 Of 2018

Ajay Rinwa

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Rajasthan Prevention Of Anti-Social Activities Act, 2006 — Section 2(c), 2(1), 3, 3(1), 3(2), 3(3), 3(4), 11, 14
Code Of Criminal Procedure, 1973 — Section 161
Constitution Of India, 1950 — Article 22(5)

Citation : (2019) 05 RAJ CK 0061

Hon'ble Judges : Alok Sharma, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : S.S. Hora, Rekha Madnani

Final Decision : Allowed

Judgement

Instant Habeas Corpus petition has been filed assailing the order dated 30-6-2018 passed by the District Magistrate Sikar under the Rajasthan Prevention of Anti-Social Activities Act, 2006 (hereafter 'the Act of 2006') whereby direction was issued to detain the petitioner-detenu.

The preventive detention was based on a report sent by the Superintendent of Police, Sikar on 29th June, 2018 wherein the petitioner was classified as a "dangerous person" within the meaning of Section 2(c) of the Act of 2006. In the report, the Superintendent of Police observed that the detenu namely, Ajay Rinwa was involved in anti-social activities which being prejudicial to maintenance of public order, necessitated an order that he be detained. The District Magistrate taking note of the aforesaid found himself satisfied that Ajay Rinwa was a "dangerous person" as defined under Section 2(c) of the Act of 2006 and based on such satisfaction passed the order under Section 3(1) of the Act of 2006. The said order was approved by the State Government under Section 3(3) of the Act of 2006 and thereafter an opinion positive to the

detention given by the Advisory Board, the order of detention was thus confirmed by the respondent State for a period of one year from the date of detention order i.e. 30th June, 2018.

The petitioner-detenué has challenged the said detention order on manifold grounds.

Mr.S.S. Hora, counsel for the petitioner submitted that earlier too the petitioner had been served with an order of preventive detention on 14th June, 2016 passed by the District Magistrate, Sikar under Section 3(2) of the Act of 2006. The said order was run through the requisite statutory procedure and confirmed by the State Government. But it was set aside by the Division Bench of this court in DB Habeas Corpus Petition No.143/2016 Ajay Rinwa Vs. State of Rajasthan & Ors., vide judgment dated 19th September, 2016.

Mr.S.S. Hora submitted that the earlier detention order dated 14-6-2016 which was quashed had detailed sixteen criminal cases against the detenué between the period 2003 and 13-6-2016. The impugned detention order dated 30-6-2018 is yet again founded inter alia on the same sixteen criminal case and additionally three others. And thus albeit the impugned detention order also incorporates three additional cases for the purported subjective satisfaction of the detaining authority and confirmation by the State Government following the Advisory Board having found "sufficient reasons, inclusion of material earlier informing the detention order dated 14-6-2016 while passing the subsequent impugned detention order dated 30-6-2018 vitiates, rendering it liable to be quashed only on this ground alone. In support of his submission, Mr.S.S. Hora relied on the case of Chhagan Bhagwan Kahar Vs. N.L. Kalna [(1989)2 SCC 318]. In Para 12 of the said judgment, the Apex Court observed as under:

"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."

Mr.S.S. Hora submitted that it is thus the law of the land that where an earlier detention order has run its course either by revocation, lapse of the detention period, or has been otherwise quashed by the Courts, the material which led to its passing cannot at all be reckoned for again in the subsequent order of detention and only fresh facts, independent of facts at the foundation of the earlier but quashed detention order, can be the basis of a valid subsequent detention order. On the specifics of the challenge on the principle above, Mr.S.S. Hora submitted that the petitioner was detained by the District Magistrate, Sikar

vide the impugned order dated 30th June, 2018 on the basis of 19 criminal cases against him. However, 16 of the aforesaid cases adverted to in the detention order were included in the earlier detention order dated 14-6-2016 which was quashed. Further of those 16 criminal cases, most of the cases were stale and in 11 of those cases, the petitioner had been acquitted while in one the petitioner was allowed probation. The remainder four criminal cases were pending trial. Mr.S.S. Hora submitted that in FIR No.68/2017 registered at Police Station Duda Khera, District Churu on 18th July, 2017-subsequent to the quashing of the earlier detention order dated 14-6-2016, the name of the petitioner was not specifically mentioned by the informant. It was only alleged that he was a potential conspirator. The subsequent implication of the petitioner was on the basis of statements under Section 161 CrPC, recorded four months after the incident. The petitioner was yet arrested in the course of investigation in the said FIR. For the resultant reason of a weak prosecution case based only on suspicion, the petitioner was enlarged on bail by this court vide order dated 5th May, 2018. Therein, the court observed that there was no evidence to show the presence of the petitioner at the place of the alleged crime and it appeared that his name was included owing to enmity. Thus, on the basis of FIR No.68/2017 at PS Duda Khera, there was no ground to sustain the passing of the preventive detention order dated 30-6-2018, under the Act of 2006, submitted Mr.S.S. Hora.

Mr. S.S. Hora further submitted that the petitioner in the detention order was classified as a "dangerous person" within the meaning of Section 2(c) of the Act of 2006. A "dangerous person" is one who habitually commits the offences mentioned under Section 2(c) of the Act of 2006. "Habitual" under the Act of 2006 has the connotation, Mr.S.S. Hora submitted of acts or omissions committed repeatedly, persistently and frequently making a thread of continuity stringing together similar repetitive acts. Mr. S.S. Hora submitted mere allegations for offences detailed do not suffice and a person to be found habitual has to have a couple of convictions at trial. The petitioner has none at all for any serious/ grave offence, but in fact was acquitted in 11 of the criminal cases. These cases relied upon could not supply any material for finding the petitioner a habitual offender and hence dangerous. As regard the other cases concerned, Mr. S.S. Hora submitted that the allegations set out in the impugned detention order do not even remotely suggest that there was persistency, frequency or thread of continuity in respect of the offence alleged to classify the petitioner a habitual offender. Mr. S.S. Hora submitted that of the 19 criminal cases detailed, mostly are regarding non serious cases triable by Magistrate. And they cover a period of 14 years i.e. 2003 and 2016 and can by no stretch reasonably entail a finding, more so in view of acquittal in 11 and benefit of probation in one, that the petitioner "habitually commits or attempts to commit" offences under IPC or other offences detailed in Section 2(1) of the Act of 2006.

Mr.S.S. Hora further submitted that an order under Section 3 of the Act of 2006 can only be passed if the action of the detenue is prejudicial to the public order. The term "public order" does not take in its ambit, offences involving ordinary

law and order/ breaches and largely non serious offences. Only offences with potential repercussion of large scale/ widespread public disturbances can fall in the ambit of threat to "public order". The satisfaction of the competent authority that detention is necessary for maintenance of public order is thus also in the instant case not even remotely established. Referring to Section 3(4) of the Act of 2006, Mr.S.S.Hora submitted that the explanation thereto defines "public order" as under:-

"For the purpose of this sub-section public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the public at large or any section thereof or a grave or widespread danger to life, property or public health."

On that definition in context of the criminal cases adverted to in the detention order as pending against the petitioner, the petitioner's alleged activities could not be held to be a threat to public order and hence the detention order dated 30-6-2018 against the petitioner was an abuse of law and hence malafide. In fact no ground obtained with the District Magistrate to invoke Section 3 for detaining the petitioner nor was it present before the State Government for approval and confirmation thereafter following the cursorily view of the Advisory Board wrongly holding that there was sufficient cause for the detention of the detenue.

It was further submitted by Mr.S.S. Hora that the impugned order of preventive detention dated 30-6-2018 relied upon a purported notification dated 15-1-2018 whereby the District Magistrate, Sikar was allegedly authorized u/s.3(2) of the Act of 2006 to exercise the State Government's power under Section 3(1) of the Act of 2006. No copy of the said notification was supplied to the petitioner with the grounds upon which the detention order was passed. Non supply of the Notification dated 15-1-2018 prevented the petitioner from making an effective representation on the manner of conferment of the jurisdiction on the District Magistrate to pass the detention order, the resultant illegality of his detention. Hence the detenue's right to make an effective representation having a bearing on the protection of his constitutionally protected liberty was violated. Mr.S.S. Hora submitted that in fact the mechanical delegation of power by the State Government to the District Magistrate was unauthorized as there was at the relevant time no circumstance prevailing or reasonably likely to prevail in District Sikar which could have even remotely led to the satisfaction of the State Government for delegating its power of preventive detention to the District Magistrate under Section 3(2) of the Act of 2006. Mr. S. S. Hora prayed the notification dated 15-1-2008 be called for and be declared ultra vires Section 3(2) of the Act of 2006 and following that the petitioner's preventive detention order dated 30-6-2018 passed unauthorisedly by the District Magistrate, Sikar also be set aside.

Mr.S. S. Hora further submitted that in any case the offence additionally alleged

to be fresh facts taken into consideration by the respondents to pass order of preventive detention namely; FIR No.68/2017 was registered in District Churu and not in District Sikar. Therefore, also for this reason, the District Magistrate Sikar could not have taken that fact, for whatever its worth, into consideration for passing the order of preventive detention at Sikar because the power of District Magistrate, Sikar was limited to consideration of the circumstances prevailing or likely to prevail within the local limits of his own jurisdiction i.e. Sikar district.

Mr.S.S. Hora submitted that the representation submitted by brother of the petitioner was decided by the State Government vide order dated 13-7-2018 without dealing with the grounds taken in the representation. The order rejecting the representation more so after an unexplained delay of 8 days, was non-speaking and hence the detention order dated 30-6-2018 is liable to be quashed also for this reason. Learned counsel in support of his submission placed reliance on the judgment of the Apex Court in the case of Frances Coralie Mullin Vs. W.C. Khambra [(1980)2 SCC 275].

Mr.S.S. Hora further submitted that the order of preventive detention was approved by the State Government under Section 3(3) of the Act of 2006 vide order dated 5-7-2018. The copy of the State's approval order was not furnished to the petitioner for reason of which he was denied his right under Article 22(5) of the Constitution of India to file a representation against the said order. That also vitiates the petitioner's detention, submitted Mr.S.S. Hora.

Mr.S.S. Hora also submitted that as per Section 11 of the Act of 2006, the reference on the petitioner's preventive detention had to be made to the Advisory Board within three weeks from the date of detention. The three weeks from 30-6-2018- (the order of detention) expired on 20th July, 2018 or at best 21st July, 2018. However, in the case of the petitioner, the reference was made beyond 20-7-2018 and case was placed before the Advosory Board on 24-7-2018. This entailed a clear contravention of Section 11 of the PASA and for this reason too the detention order dated 30-6- 2018 is palpably, without anything more, rendered bad as it was in the eye of law and deserves to be set aside.

Mr.S.S. Hora finally submitted that an order for detention under the Act of 2006 could in terms of Section 14 of the Act of 2006 be upto a maximum of one year. One year detention thus cannot be automatic and as if by default in every case. The period for which preventive detention may be required, circumstances therefor being made out strictly, is therefore a matter to be actively considered by the detaining authority, approving authority, Advisory Board and the confirming authority. The issue of the period of detention thus requires active application of mind to ascertain what period of detention is required in public interest. There can be no bludgeoning of personal liberty by a mechanical fit all period of one year detention i.e. the maximum period. No reasons for passing the impugned detention order for the maximum period of one year are set out in

the impugned order or otherwise available on record. That betrays non application of mind of the District Magistrate/ approving authority/ confirming authority under the Act of 2006 and vitiates the impugned detention order 16-8-2018. Hence it is liable to be set aside.

Per contra, counsel for respondents Ms. Rekha Madnani submitted that all procedural requirements of the relevant statute have been meticulously complied with and the District Magistrate exercised his lawfully delegated power under Section 3(1) of the Act of 2006 on his subjective satisfaction under sub-section (2) of Section 3 of the Act of 2006 that the detainee's detention was in public interest. Once the procedure prescribed under law has been scrupulously followed/ complied with in its letter and true spirit by the authorities, in absence of any malafide, action of the State Government and its authorities cannot be said to be bad in law. No proof of malafide obtains in the instant case. No illegality or arbitrariness can there be made out to warrant any interference by the court with the detention order impugned, she submitted.

Heard counsel for the parties and perused the material available on record.

Admittedly in the first instance the detention order dated 14- 6-2016 issued against the petitioner under the Act of 2006 was founded on 16 criminal cases. On challenge it was quashed by this court on 19-9-2016. The present detention order dated 30-6-2018 passed by the District Magistrate and approved by the State Government and then confirmed by it subsequent to the opinion of the Advisory Board is founded upon 19 criminal cases. Of the aforesaid 19 criminal cases, 16 cases are those which were reckoned for in the first detention order dated 14-6-2016, which was quashed by the court, as recorded hereinabove. Yet those 16 criminal cases have again been taken into consideration for passing the impugned detention order dated 30-6-2018. The Apex Court in the case of Chhagan Bhagwan Kahar Vs. N.L. Kalna (supra) has held that such consideration of the material in subsequent detention order, which were considered in the earlier detention order, nullifies the entire subsequent order of detention.

We are thus of the considered view that on this short ground alone, in the facts of the instant case, the petition is liable to succeed. We hold for this reason that the impugned detention order dated 30- 6-2018 is not sustainable in the eyes of law and liable to be quashed and set aside. It is so. In this view of the matter, it would be an idle formality to address other substantial submissions agitated by Mr.S.S. Hora, counsel for the petitioner, to lay a challenge to the detention order dated 30-6-2018.

Consequently, the impugned order of detention dated 30-6- 2018 is set aside and quashed. The petitioner-detenu Ajay Rinwa is directed to set at liberty forthwith.

The habeas corpus petition stands allowed accordingly.