
(2008) 04 AHC CK 0135
In the Allahabad High Court

Atul Singh alias Murgi Singh alias Babalu Singh	APPELLANT
Vs	
District Magistrate and Others	RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Arms Act, 1959 — Section 25, 3
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 115, 307, 316, 356, 394

Citation : (2008) 04 AHC CK 0135

Hon'ble Judges : Yatindra Singh, J; Ran Vijay Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Yatindra Singh and Ran Vijay Singh, JJ.—In the month of July 2007 three criminal cases were registered against the petitioner namely Case crime No. 1350 of 2007, u/s 356 IPC, Case Crime No. 1351 of 2007, under Sections 394 412 316 115 307, IPC and case Crime No. 1368 of 2007 u/s 3/25 Arms Act, Police Station Kotwali, District Deoria. The petitioner was arrested in pursuance of these criminal cases on 18.7.2007. Subsequently an order u/s 3 of National Security Act (the Act) was passed against the petitioner on 1.8.2007. Hence the present habeas corpus petition.

2. We have heard counsel for the petitioner and the AGA for the respondents.

3. The counsel for the petitioner submitted that the detention order is illegal because,

(i) There is no satisfaction of the detaining authority that the petitioner is likely to be released on bail.

(ii) The ground for detention relates to law and order rather than public order.

4. It is not necessary for us to decide the second submission as in our opinion the habeas corpus petition is likely to be allowed on the first ground.

5. There is no dispute on the question whether detention order can be passed or not if a person is in jail. The courts have laid down the principle as to when such a detention order can be passed. In this regard, the leading case is reported in Kamarunnissa and Others Vs. Union of India and another, Kamarunnissa v. Union of India and Anr. Veeramani Vs. State of T.N., This has been followed in T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, TV Sravanan alias SAR Prasana Venkatachaariar Chaturvedi v. State through Secretary and Anr. JT 2003 SC 503 Union of India v. Paul Manickam and Anr. The Supreme Court in paragraph 13 of the Kamarunnissa case has held:

From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order can not be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher court.

6. In the detention order, satisfaction of the District Magistrate is not recorded that the petitioner is likely to be released on bail. It is necessary before detention order can be passed.

7. In view of the above, the detention of the petitioner is illegal. The petitioner is set at liberty; he may be released unless he is wanted in some other case. With these observations, the writ petition is allowed.