
(2004) 01 AHC CK 0097

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition Nos. 47663 and 37477 of 2003

Bachau Yadav @ Bachchan Yadav

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2004) 01 AHC CK 0097

Hon'ble Judges : R.S.Tripathi, J and S.Rafat Alam, J

Final Decision : Disposed Of

Judgement

1. These two writ petitions filed under Article 226 of the Constitution of India are directed against the order of the District Magistrate, Ghazipur detaining the petitioners under Section 3 (2) of the National Security Act, (in short referred to as the N.S.A.) because of their involvement in the same incidents. As accusations against both the petitioners are the same and similar evidence has been brought against them, these two petitions have been heard together for the purpose of final disposal pursuant to the agreement of the counsel for both sides. The detention order dated 1652003 has been passed against the petitioner Laloo alias Lal Bachchan Yadav where the detention order dated 3062003 has been passed against the petitioner Bachau Yadav alias Bachchan Yadav by the District Magistrate, Ghazipur.

2. From the perusal of grounds of detention we find that main allegations against the petitioners are that on 1832003 at about 12.30 p.m. in village Esopur (Manikpura) at police station Nandganj, District Ghazipur the villagers were busy in celebrating Holi festival. In the meantime, the petitioner Laloo alias Lal Bachchan Yadav, real brother of petitioner Bachau alias Bachchan Yadav, Shiv Bachchan alias Subachchan Singh, Dinesh Yadav, Vijay Yadav armed with DBBL gun and Lathi came at the residence of Ram Murat Yadav of the village and they found Smt. Santra Devi wife of Bindu Yadav, Suresh Yadav, Shitla Devi and Nandu alias Nandlal Yadav sitting at the door and the petitioners alongwith their companions

with a view to commit the murder proceeded towards them. Apprehending about the evil designs of the petitioners and their companions Shitla Devi and Santra Devi cautioned saying that Bachau alias Bachchan Yadav and others were coming and they exhorted Nandu to run away and to escape. On this, the petitioners and their companions became angry and they surrounded above Shitla Devi and opened five arms on her. Shitla Devi suffered injuries and died on the spot itself. Nandu alias Nandlal Yadav who was lying on a cot there, started running away towards the fields with a view to save his life but the petitioners and their companions chased him and caught hold of him in the field and petitioner Bachau alias Bachchan Yadav fired by means of licensed gun of the petitioner Lalloo alias Lal Bachan, consequently Nandu alias Nandlal fell down and died. On account of above incident of double murder on the occasion of Holi, the villagers being panic stricken and due to fear in their minds, started running helter and shelter, consequently the tranquility of the village was disturbed. A report of the incident was lodged by Km. Reeta Yadav at Police Station Nandganj, District Ghazipur and case was registered at Crime No. 237 of 2003, under Sections 147, 148, 149, 302 IPC and Section 7 Criminal Law Amendment Act against the present petitioners and their companions. After investigation, police submitted charge sheet in that case on 25 42003. In the grounds of detention it is further alleged that on 2632003 at about 7.30 p.m. Santra Devi, daughterinlaw of deceased Shitla Devi was going alongwith her husband's younger brother Suresh Yadav alias Bhanji and sisterinlaw Usha Devi in a bus to meet Bindu Yadav,her husband at Ghazipur and when their but stopped at Saheri railway crossing for dropping passengers, in the meantime, Bachau alias Bachchan Yadav and present petitioners and their companions boarded the same bus and using abusive language they threatened her saying that they would not spare her and Suresh alias Bhanji and Usha Devi. They followed above Santra Devi and others with a view to commit their murder saying that they would meet the same fate as of Shitla Devi and Nandu alias Nandlal. Smt. Shantra Devi and her companion managed to run away getting down from the bus and a noncognizable report No. 37 of 2003, under Sections 352, 504, 506 IPC was lodged in this regard.

3. On 2832003 at about 9.00 a.m. when Umesh Yadav son of Late Ram Murat Yadav, Ram Janam Yadav and Ramayan Yadav were going in connection with pairvi of a case at Ghazipur, when the bus in which they were going, stopped at Fatehullapur, petitioners alongwith their companions boarded the same bus and seeing Umesh they not only used abusive languages but they also threatened and chased him to commit his murder. Umesh and his companions managed to escape by getting down from the bus and reached Court premises after hiding themselves. A noncognizable report No. 39 of 2003 was lodged by above Umesh for this on 2832003 at police station Nandganj, District Ghazipur. The fourth incident is alleged to have been taken place on 1742003 in which informant Santra Devi lodged a written report at police station Nandganj, District Ghazipur alleging that on 1642003 she and her brother Ram Nagina Yadav alongwith Ram Dular were going to Ghazipur Court in connection with her case, in front of Court

of Chief Judicial Magistrate, Ghazipur at about 2.00 p.m. present petitioners and their companions met them and seeing Smt. Santra Devi and her brothers, they abused her and attacked with a view to beat but the police officials reached and intervened. At that time petitioners and their companions threatened her to finish her entire family. Smt. Santra Devi hiding herself managed to reach Nandganj at about 5.00 p.m. but there at the railway station Tiraha Teju Yadav and Amar Nath Yadav were already present and again they using abusive languages gave kicks and fists blows to her. The shopkeepers intervened but at that time above Teju Yadav and others threatened her to finish her and her family if she did not stop pairvi of case. A report at case Crime No. 288 of 2003, under Sections 147, 352, 504, 506, 323 IPC and Section 7 Criminal Law Amendment Act was registered by the police at police station Nandganj, District Ghazipur for this incident.

4. As per the detention order the petitioners and their companions had criminal background and had formed a gang creating terror amongst the members of public of the vicinity on account of which villagers were not ready to depose against them and police has also registered a case at Crime Nos. 292, 293, 294, 295, 296, 297 of 2003, under Section 3(1) U.P. Gangster and Prevention of Antisocial Activities Act, 1986. It is in the detention order that there were five criminal cases at Crime No. 237 of 2003, under Sections 147, 148, 149, 302, 504, 506 IPC and Section 7 Criminal Law Amendment Act, Crime No. 288 of 2003, under Sections 147, 352, 504, 506, 323 IPC and Section 7 Criminal Law Amendment Act, Noncognizable Report No. 37 of 2003, under Sections 323, 504, 506 IPC, Noncognizable Report No. 39 of 2003, under Sections 323, 504 and 506 IPC and Crime No. 293 of 2003, under Section 3 (1) U.P. Gangster and Prevention of Antisocial Activities Act, 1986, all registered at Police Station Nandganj, District Ghazipur and they were trying to be enlarged on bail by moving applications, therefore, if they succeed in getting bail, they would repeat the criminal activities affecting the public order hence the District Magistrate having satisfied himself for their such activities passed the impugned orders against them.

5. As facts and evidence of both the petitions are common, these two petitions have been heard together and are being disposed of by this common order.

6. Counter and rejoinder affidavits have been exchanged between the parties and are on the record.

7. We have heard Sri Rahul Sripat, learned counsel for the petitioners, Sri Mahendra Pratap Singh, learned Additional Govt. Advocate for State and other respondents and Sri J. Lal, learned Additional Standing Counsel appearing for the Union of India.

8. Learned counsel for the petitioners has raised several points challenging the impugned order of detention but during the course of arguments, he has laid emphasis on only one point arguing that from the facts and circumstances of the

present case no case of public order is made out against the petitioners. His contention is that the main incident of murder with regard to case crime No. 237 of 2003, under Sections 147, 148, 149, 302 IPC and Section 7 Criminal Law Amendment Act is on account of long standing enmity and it has nothing to do with public order. He had also vehemently argued that other alleged incidents mentioned in the detention orders are concocted stories alleged against the members belonging to the family of the informant of the murder case, therefore, no case of public order is made out. Learned A.G.A. and learned Additional Standing Counsel have opposed these arguments and have contended that from the accusations against the petitioners a case of public order is made out and the petitioners alongwith their companions repeatedly threatened the informant and his family members at different public places and on different dates, therefore, the activities of the petitioners has resulted in terror and fear in the minds of the people, hence a case of public order is made out.

9. In the light of above submissions, when we take up the impugned detention orders we find that the accusations in the First Information Report of Case Crime No. 237 of 2003 against the petitioners are that there has been litigations between the petitioners and the family of informant Km. Reeta Yadav and on account of that enmity incident is alleged to have been committed by the petitioners and their companions. A perusal of other documents annexed with the petitions go to show that on 16/4/2003 at about 2.00 p.m. when informant Santra Devi had gone to Ghazipur Court in connection with some case before the Court of Chief Judicial Magistrate, Ghazipur, the petitioners and their companions not only abused her but they chased them with a view to cause injuries. However, the police intervened and save them. Similarly the incident dated 26/3/2003 is also with regard to alleged threat given by the petitioners and their companions when Smt. Santra Devi was going to see her husband who was detained in jail at Ghazipur. The incident dated 28/3/2003 narrated in the detention order also reveals that the petitioners and their companions threatened Umesh Yadav, Ram Janam Yadav and Ramayan Yadav when they were going in a bus in connection with a case pending before the Court. According to the petitioners there had been dispute over landed property in between two families, pedigree of which is given in paragraphs 3 and 5 of the two writ petitions. The petitioners claimed that they got success from the Consolidation Court and also got favourable order from the Civil Court. These averments of the paragraph 3 of petitioner Bachau alias Bachchan Yadav and paragraph 5 of Lalloo Yadav alias Lal Bachan Yadav petitioner of their petitions remain uncontroverted from the side of the respondents. According to the petitioners, Subedar Yadav, real brother of the petitioners was done to death by Umesh, Bindu, Nandu and others on 29/12/2001 for which the trial was pending against them before the Court and there was deep rooted enmity between the parties on account of old litigations as well as on account of above murder of Subedar Yadav. The averments with regard to the enmity due to the murder of brother of the petitioners also remain uncontroverted. All the incidents narrated in the impugned detention order relate

to individuals on account of enmity and are alleged to have been committed against those persons who belong to those families, from whom the petitioners had their litigations of property coupled with pendency of the trial of murder of the brother of the petitioners. There is thin difference between law and order and public order and in this connection we have to see all the documents furnished in support of the grounds of detention to scrutinize whether a case of public order is made out or not. In the case of *Ram Ratan Chatterjee v. State of West Bengal*, 1975 SC 609, the Hon'ble Apex Court dealing with the distinction in public order and law and order after considering its earlier judgments has observed as under:

It may be remembered that qualitatively the acts which affect law and order are not different from the acts which affect public order. Indeed a state of peace or orderly tranquility which prevails as a result of the observance or enforcement of internal laws and regulations by the Government is a feature common to the concepts of law and order and public order. The distinction between the areas of law and order and public order. As pointed out by this Court in *Arun Ghosh v. State of West Bengal*, AIR 1970 SC 1228 is one of degree and extent of the reach of the Act in question on society. It is the potentiality of the Act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of public it would raise a problem of law and order only. These concentric concepts of law and order and public order may have a common epicenter, but it is the length, magnitude and intensity of the terrorwave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting public order from that concerning `law and order.'"

In another case a Full Bench of this High Court in Habeas Corpus Writ Petition No. 11161 of 1984, *Ashok Dixit v. State*, disposed of on 18/1985, the following observations were made:

A solitary assault on one individual which may well be equated with ordinary murder can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act. It can only raise a `law and order' problem and no more. Assaulting an individual in a bus or train on account of enmity may affect only certain individuals; but if the assault is made indiscriminately in the bus or train and passengers are harassed indiscriminately the same would be likely to endanger public order as this kind of incident is bound to have such impact that it will disturb the even tempo of life of the community. The act or incident which may be attributed to the detenu may be reprehensible and yet if it concerns only specific individuals and it has no impact on the general members of the community and has no potentiality of disturbing the even tempo of life of the people, it cannot be held to be an activity prejudicial to public order.?"

In the case of *S.K. Kader v. State of West Bengal*, reported as (1972) 3 SCC 816, has observed as under:

?The question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality, it may not differ from other but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand public order on the other. It is always a question of degree of the harm and its effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even as specified localities. It is the degree of disturbance and its effect upon the life of the community in locality which determines whether the disturbance amounts only to a breach of law and order.?

In the case of Lallan Prasad Chunnilal Yadav v. S. Ramamurthi and others, reported in AIR 1993 Supreme Court 396, the Hon''ble Supreme Court observed as under:

?Now the question arises whether these prejudicial acts are of such a quality that it may be termed as disturbing ?public order?? Are these of such intensity, magnitude and spread that they rise from the level of prejudicial to ?law and order? to become prejudicial to ?public order?? And parallely which ratio of the two aforesaid cases would govern the fate of this case? it is obvious that the two cases under the Bombay Prohibition Act, 1949 registered against the appellant could legitimately provide the subjective satisfaction to the detaining authority that the appellant is a ?bootlegger? but the instances aforementioned, spread over a time, in which the appellant is attributed to have threatened individuals by speaking words or giving them fists and kicks blows could in no event be summed up as activities prejudicial to maintenance of ?public order?. Rather these are activities patently prejudicial to maintenance of ?law and order.? The power to make orders of detention stem from the satisfaction of the detaining authority with respect to any person with a view to preventing him from acting in any manner prejudicial to the maintenance of ?public order? and not prejudicial to the maintenance of ?law and order?. Logically the case of the appellant deserves to follow the course as treated by this Court in Om Prakash's case, AIR 1990 SC 496 (supra). And on that premises the order detaining the appellant need be and is hereby quashed.?

10. The facts of the instant case got reveal that the petitioners are alleged to have threatened only those with whom they had long standing enmity where as in the case of this ruling different persons against whom no enmity was alleged, were threatened, thus the instant case is a clear case of law and order.

11. The same view was reiterated in the case of Mrs. Nilima Priyadarshini v. State of Bihar, reported in 1989 JIC 117 (SC) : AIR 1989 SC 490, which is as under:

?It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on

the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in subsection (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld.?

12. The underlined portion of this ruling, when applied in the instant case, the accusations against petitioners do not make out a case of public order.

13. On the same point we have considered the view taken in the case reported as *Smt. Tarannum v. Union of India and others*, 1998(1) JIC 480 (SC) : ACC 1998 (36) 417, wherein Hon''ble Apex Court observed as under:

?As for example daredevil repeated criminal acts, open shoot out, throwing bomb at public places committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on ?public order?. Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of public order.?

?In the ultimate analysis, it is the society which suffers. Respect for law has to be maintained in the interest of the society which and discouragement of a criminal is one of the ways to maintain it. The objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of `public order` and are not merely prejudicial to the maintenance of `law and order`?.

14. Applying the above tests laid down by Hon''ble apex Court we find that in the instant case when the entire allegations made against the petitioners relate to an individual family and there are allegations of not only deep rooted enmity but also with regard to pendency of litigation in connection with property and a murder case of the brother of the petitioners it cannot be said that incidents narrated in the impugned detention order can be taken to be sufficient to disturb the public tranquility to make out a case of public order. In our view the nature of

accusations made against the petitioners at the most can be taken to make out a case of law and order. For the offences against them the trials of the petitioners would be taken up in accordance with law. There is absolutely no material on the record to show that even tempo of life of the Community or Society was disturbed on account of incidents which are said to have been committed against the informant and her family members.

15. In view of all above discussions, we are of the opinion that the impugned orders passed against the petitioners cannot be taken to be sufficient to make out a case of public order, therefore, these two writ petitions deserve to be allowed.

16. In the result, these petitions succeed and are allowed. The impugned orders of detention are hereby quashed. The respondents are directed to set the petitioners at liberty forthwith unless they are required to be detained in any other case. There shall be no order as to costs.