

(2003) 05 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Petition No's. 43233, 43955, 46433, 46439, 46442, 46445, 46448 and 46451 of 2002

Bandoo Bedia and Others etc.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2003) CriLJ 4627

Hon'ble Judges : V.S. Bajpai, J;S.K. Agarwal, J

Bench : Division Bench

Advocate : A.N. Mishra, for the Appellant; B.N. Singh and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

1. There are eight writ petitions connected with each other. Civil Misc. Habeas Corpus Writ Petition No. 43233 of 2002, therefore, is treated as principal case. It was preferred by Bandoo Bedia son of Ralli Bedia. Other petitioners are Bhagoni alias Bhagwan alias Bhagwan Das alias. Bhagone, Raghav Bedia, Pappu Bedia, Gabbar Bedia, Vijay Bedia, Raj Pal Bedia and Kullu Bedia.

2. An F.I.R. was registered as case Crime No. 135 of 2002 against the petitioner in Writ Petition No. 43233 of 2002 and nine others under Sections 147/148/149/323/353, I.P.C. and Section 7 of Criminal Law Amendment Act at P.S. Madawara, District Lalitpur.

3. The facts of the F.I.R. as disclosed in the grounds of detention, are that on 10-6-2002 at about 4.45 p.m. in a Mela (fair) which was going on in village Rangaon near Moti Mandir, Pappu Bedia, the brother-in-law of the petitioner, was exhibiting unpleasant behaviour towards females. He was asked to desist from his misconduct by three policemen present in the Mela. He did not stop his unlawful activities with the female members present in the fair. Consequently

Constable Vimlendra Singh, Karim Khan, and Head Constable Ram Prakash Tewari took him into their custody. When they were proceeding with Pappu Bedia to the police station, the petitioner along with his other companions started belabouring them near a Imli tree with Sariya, Lathi and dandas with an intent to kill the constables. He managed the release of his brother-in-law, Pappu Bedia, who in turn also joined this petitioner in the assault of the constables. Constable Vimlendra Singh sustained injuries on his head and hand. There was disturbance in the fair. People started running helter-skelter. The shopkeepers downed their shutters and started fleeing from the fair premises. The entire fair was completely disturbed. The people living in the vicinity had closed their doors and confined themselves within the four walls of their houses. The public order allegedly was completely disrupted. On the arrival of other police personnel on duty in the fair, the petitioner along with the companions and the released accused Pappu Bedia fled from the spot. Constable Karim Khan lodged the report of this incident, as earlier reported. Case Crime No. 135 of 2002 under the abovesaid sections was registered. It is also alleged in the grounds that the petitioners withdrew from the spot by resorting to firing. The people became so panicky and afraid of the petitioner Pappu Bedia that no body was prepared to state the truth or make any statement in Court, though the policemen had all along been trying to checkmate the growing influence and the terror of this petitioner by their frequent visit of the village. Additional force was also deployed in the region for the above said purpose.

4. The Investigating Officer, on his return to the police station on 11-6-2002 from the investigation, had also made some entry in G.D. No. 25 at 8.20 p.m. to this effect. The petitioner was arrested on 14-6-2002 and remanded to jail thereafter.

5. A proposal for detention of the petitioner was mooted by S. H. O. Hargovind Verma of P.S. Madawara, District Lalitpur. The report of the Circle Officer attached to this proposal also indicates that this petitioner is a hazardous person and nobody feels himself secure from him in the society. The public does not dare to challenge him, nor they are prepared to make any statement against him either to the police or in the Court. The report of the S. P. submitted along with the proposal of the S. H. O. shows that the petitioner has made an application for his release before the Additional Chief Judicial Magistrate, Maharuani, Lalitpur, on 18-6-2002, which was to be heard on that very day in addition to. There are every possibilities of his immediate release. On being released on bail the petitioner, according to these reports, is likely to indulge into his nefarious activities and he may commit some serious offence, which may cause disruption of the public order. Along with the proposal, the sponsoring authority has forwarded, life history and criminal antecedents of this petitioner as also other petitioners apart from the copy of the F. I. R., copy of General Diary Report No. 22 dated 10-6-2002 at 5.30 p.m. copy of General diary Report No. 25 at 8.20 p.m. made by S. H. O. on his return from the investigation of this case on 11-6-2002, copy of the spot inspection report and statements of the witnesses, police and public, recorded u/s 161 Cr. P. C. to the District Magistrate for

initiating action u/s 3 of the National Security Act.

6. The bail application filed by the petitioner on 18-6-2002 was rejected by the Additional Chief Judicial Magistrate, Maharauni, Lalitpur, on 18-6-2002 itself. A copy of the bail application was also produced before the concerned District Magistrate, but the rejection order was not filed, though the proposal was sponsored on 20-6-2002. It is also a fact that no further bail application was filed either before the Sessions Judge or before this court by the petitioners.

7. After receipt of the report along with the proposal from the Superintendent of Police, Lalitpur, on 21-6-2002 the District Magistrate, Lalitpur, on the same day passed the impugned order of detention for a period of one year u/s 3(2) of the National Security Act against the petitioner. The order was served upon the petitioner on the same day in District Jail through the Superintendent of the Jail, so the petitioner's detention commenced with effect from 21-6-2002.

8. After the detention order was passed by the District Magistrate, the papers were submitted to the State Government, which had approved his detention by its order dated 28-6-2002. All the relevant papers were forwarded along with the detention order viz, grounds of detention and other connected papers by the State Government to the Central Government on 1-7-2002. It was received by the Central Government on 5-7-2002.

9. The petitioner submitted a detailed representation through the Superintendent, district Jail, Lalitpur, on 3-7-2002 for the District Magistrate, Lalitpur, to consider the same. The District Magistrate, Lalitpur, called for the comments from the Superintendent of Police on the representation of the petitioner. The S. P. submitted his comments on the representation on 6-7-2002. The representation was forwarded to the State Government and the Central Government by the District Magistrate, Lalitpur, on 9-7-2002. The State Government received the same on 10-7-2002. On 11-7-2002 the representation along with parawise comments were sent to the U.P. Advisory Board. The State Government rejected the representation of the petitioner by its order dated 15-7-2002, communication of which was made to the petitioner on 16-7-2002 in District Jail, Lalitpur.

10. The petitioner was summoned by the Advisory Board and he appeared in person before the same on 24-7-2002. The Advisory Board expressed its opinion that there are grounds for detention of the petitioner on 6-8-2002 for consideration of the State Government. The State Government communicated through radiogram and letter dated 19-8-2002 that the detention of the petitioner is confirmed for a period of 12 months with effect from 21-6-2002. On 14-8-2002 the representation of the petitioner was rejected. The information was communicated to him by the State Government on 28-8-2002. Rejection of his representation by the Central Government was also communicated to the petitioner.

11. Learned counsel for the petitioners has made following submissions that this

detention is based upon a solitary case. The entire incident does not give rise to any disturbance to the public order and tranquillity, the incident is squarely covered under law and order and the sponsoring authority being badly biased by the assault on the police personnel of the police station had mala fide sponsored for the detention of the petitioner and his other family members and associates on false and cooked up facts. The facts averred about the character and antecedents of the petitioner were totally false and concocted as revealed from the history sheet furnished along with the proposal by the said authority. He has also submitted that this is the only case against the petitioner and 7 other petitioners on the basis of which they were detained.

12. The occurrence is dated 10-6-2002. The bare facts were already detailed in the preceding paragraphs. The allegations that the petitioner bears a hazardous character and is infected by criminality and his criminal activities have created a terror amongst the people living in the area and none is there to defy him or make a complaint to the police or the Court are ingenious fabrication by the sponsoring authority. The sponsoring authority or other senior police officer, who recommended for the detention of all the petitioners on these facts knew that none of them bear any such character. The mother of Pappu Bedia is a celebrated dancer. She is a renowned folk dancer of Bundelkhand. They are keeping alive the tradition and heritage of the Region. They are expert performers of Rai Nritya (dance) and Shera Nritya. They have been performing these dances through out the country and State capitals. They have also performed these dances on national day celebrations, like Republic Day, 15th August, 26th January, etc. Smt. Phoola Devi was honoured many a times by the President of India and Prime Minister, late Sri Rajiv Gandhi. The present petitioner is student. Smt. Phoola Devi and two other females were also members of local Zila Panchayat. Smt. Phoola Devi convene and manages the local weekly fair at Moti Mandir in her village Rangaon. On 10-6-2002 she left the village to participate in a marriage celebration in her family. The management of the fair was left by her in the hands of Pappu Bedia and the petitioner. These three police personnel, who were allegedly assaulted by these petitioners and some others, were themselves making indecent gestures and vulgar comments against the village women who were presenting dance performance near Jhoola. Petitioner Pappu Bedia objected to their indecent behaviour. He tried to desist them from repeating the same. On this, these three policemen got enraged and started hurling abuses upon him. They caught and assaulted him. He was forcibly dragged to a lonely corner. He was beaten there also by Dandas, whereupon he shouted for help and, these policemen thereon were attacked by the local public gathered in the fair. They had got Pappu Bedia liberated from their clutches. The policemen left for the police station extending serious threat to ruin the life of the entire village. A false case was registered in order to teach the villagers, including the petitioner and other petitioners in the connected writ petitions, a lesson for mustering courage to desist them from their misdeeds. The defence is corroborated by complete absence of any criminal antecedents against all these petitioners. We have

examined the antecedent chart. Since these people who belong to traditional folk dancing community they and their women are treated with contempt by the society. The policemen were no exception to it.

13. The averments made in the proposal by the sponsoring authority to the contrary, it is contended seriously, were imaginary and fabricated in order to punish these young and old the petitioners, in all these writ petitions, a lesson for their life, so that they may never act against the police even if the men in robe were behaving in a manner prejudicial to the social interest and dignity of these females. The last submission is that the orders were passed post-haste without any application of mind by the District Magistrate.

14. In our opinion, the facts adverted to above do not make out any case of disturbance of public order. The disturbance caused by the assault on the policemen in the fair did not cause any disturbance to the public order, The fair was organised by Bedia community in their own village. The conduct of Papu Bedia, as alleged in the F. I. R., in the circumstances, does not inspire confidence that he was misbehaving with females of his own community or of neighbourhood. Most of them were related "closely to these petitioners. In the circumstances, the averments made in the proposal and accepted by the detaining authority, as fostered by the S. H. O., Circle Officer and the S. P., Lalitpur, in our opinion, were flimsy, made up, and tailored only to punish these young men, the petitioners, in these impugned petitions, for mustering courage to teach these constables who were drunk with the power and had forgotten that there are females in their own families as well. The females ought not to be looked in derogation if they belong to down-to-earth class. The females of the dancer community, therefore, are no public property to be misbehaved or shown disrespect to. As earlier discussed, members of the Bedia community would not show such gesture or conduct, as alleged against Pappu Bedia in the F. I. R. because fair was mostly inhabited and visited by the members of the same community or females of the nearby villages. The mother of Pappu Bedia being a female of high status in the national Art Gallery being a reputed folk dancer of the country would not allow any one of them to misbehave or act indecently in the fair. Pappu Bedia must also be conscious that it would damage their business interest adversely. Some of these accused petitioners are also equally reputed dancers and athletes or sports persons. The behaviour alleged against them by the policemen does not impress us at all. These facts were not discussed by us by way of any criticism of the charges on merit, or by way of any assessment of the activity of the sponsoring authority. We are discussing them in regard to the factum of application of mind by the District Magistrate. The speed with which the entire proceedings were drawn and the detention orders were clamped on these petitioners, leaves hardly any room to doubt that there does not exist any application of mind by the detaining authority to the facts of the case. We are conscious fully that this satisfaction is only subjective and not objective, but subjective satisfaction could not be arrived at without scrutinising the charges levelled by the sponsoring authority in the proposals against these petitioners.

These facts were discussed by us in this light. Thus, we are convinced that the entire proceedings were completed within two days, i.e. on 20th and 21st June, 2002. On 20th June the proposals were fostered against these petitioners by S. H. O. Hargovind Verma of P.S. Madawara, District Lalitpur. Both the officers, Circle Officer and the Superintendent of Police, slapped their reports on the proposal on 20th June, itself. Armed with these reports the proposal was submitted to the District Magistrate on 21-6-2002. Posthaste, as it is, the first order of detention was passed in this case and 4-5 days later against these petitioners, on the same day. They were served also promptly. It clearly puts the facts all-square. Where was the time for the District Magistrate to apply his mind? All these authorities were motivated clearly by the fact that men in robe suffered humiliation at the hands of people of base traditions and culture. It was hurting their pride severely. A lurking fear that the malaise may spread, this action was imperative and taken in such smartness.

15. Apart from these, as earlier discussed, there is no longevity in the disruption of the fair by the act complained of. If we accept them verbatim, as alleged by the sponsoring authority and accepted by the District Magistrate, the disturbance was not so potent as to cause any disruption to the public order of the area and its tranquillity which may entitled the detention of these petitioners under the national Security Act, 1980. Whatever disturbance was caused, was momentary and the police force, in all probability, was not rushed to maintain the public order but was rushed to the Mela area to quell these Bedias who tried to desist the policemen from treating callously their females in the Mela area and when the policemen tried to make a vulgar show of their authority, they were made to suffer humiliation. It appears to us a case of offenders trying to punish those who probably acted in defence of the honour of their women folk. One of them lodged a tailored report. Therefore, we do not find in the activities of these petitioners any disturbance to the public order or disruption of the public tranquillity of the area. The arm and reach of their act and conduct, in our opinion, was very short lived. Therefore, in our opinion it was clearly a law and order problem and did never pose any threat to the public order and public tranquillity of the area, as alleged in its proposal by the sponsoring authority.

16. It is now well realised that the line of demarcation between "law and order" and "public order" is very marginal. Any act of violence that creates an offence naturally poses problem first to law and order. Every offence necessarily does not come within the purview of "public order" by virtue of it being an offence committed by an individual or a group of individuals. It would fall within this clan if its ramifications have the capability and potential to disrupt the peace and tranquillity of that area wherein the offence was so committed, if it, by its very nature, succeeds in causing disruption in normal mode of living and even tempo of the society unhesitatingly, it is liable to be handled sternly under these preventive laws. The act would be clearly covered by the connotation "public order". The presence is in evident and its fall out, we are convinced lacks this qualification.

17. The questions raised in this petition and answered by us equally cover the other seven petitioners cases as well. Dates of detention in their cases are few a days later though facts and submissions remain the same.

18. In view of these facts and our findings, these petitions are allowed. The petitioners, who are under detention, shall be released forthwith if not otherwise wanted in any case.