
(2009) 05 RAJ CK 0134

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 8535 of 2008

Bhagwan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

National Security Act, 1980 — Section 3(3)

Citation : (2009) 05 RAJ CK 0134

Hon'ble Judges : K.S. Rathore, J;Bhanwaroo Khan, J

Bench : Division Bench

Advocate : Kapil Gupta, for the Appellant; Rajendra Yadav, Govt. Counsel, for the State., for the Respondent

Final Decision : Allowed

Judgement

1. By way of this habeas corpus petition, the petitioner has challenged the order of detention dated 08.06.2008, passed by the District Magistrate, Bharatpur while exercising the powers conferred u/s 3(3) of the National Security Act, 1980.
2. Against the order of detention, submitted a detailed representation through his advocate, the copy whereof is annexed along with this petition as Annex-4.
3. The order of detention has been challenged on the ground that the criminal case arising out of FIR No.49/2007 u/s 302 and 201, IPC relates to the State of Uttar Pradesh and same is based on circumstantial evidence. Thus, the aforesaid case has absolutely no bearing in the eye of law upon the alleged danger to the security of the State. The case has no proximity of activity in any manner prejudicial to the security of the State.
4. With regard to criminal case arising out of FIR No.221/2007 the offence under Sections 279 and 337, IPC have no nexus with the danger to the security of the State. Another criminal case arising out of FIR No.246/2007 dated 31.05.2007 and FIR No.255/2007, the same are with regard to "Gurjar Agitation", wherein the petitioner has been falsely implicated along with several other persons. So

far as criminal case arising out of FIR No. 13/2008 dated 07.01.2008 is concerned, the parties have settled the matter by entering into a compromise.

5. The order of detention has also been challenged on the ground that the detaining authority without being supplied the information by any agency, suo-moto exercised the powers conferred on it and, therefore, the order of detention is passed without application of mind and same deserves to be quashed and set aside. Thus, the detaining authority has miserably failed to consider the valuable aspect that the petitioner was in jail while the detention order was passed. The petitioner through his advocate submitted a representation, that too has not been considered by the State, the State Government has admitted that the representation of the petitioner has not been considered in view of the order passed by the Advisory Board, Jaipur headed by Mrs. Justice G.S.Mishra, Judge Rajasthan High Court, Jaipur.

6. Learned Counsel for the petitioner submits that the every person is provided safeguard under Article 22 of the Constitution of India against the illegal arrest and detention. In the instant case, the petitioner has already represented before the concerned authority, which admittedly has not been considered by the State.

7. It is stated on behalf of State that Office of District Magistrate, Bharatpur received the representation of the petitioner through his advocate on 22.07.2008, i.e., after passing the decision by the Advisory Board, Jaipur dated 07.07.2008 and order dated 17.07.2008. Therefore, in such circumstances, there was no need to decide or consider the representation of the petitioner, which was received after the decision of Advisory Board, Jaipur headed by Mrs. Justice G.S.Mishra, Judge Rajasthan High Court, Jaipur.

8. Learned Counsel for the petitioner in support of contention, placed reliance on the ratio decided by Hon''ble the Supreme Court in the case of Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal, . The Hon''ble Supreme Court has decided the question whether the State Government or the detaining authority have constitutional obligation to consider the representation. The Hon''ble Supreme Court has held as under:

(i) Clause 5 of Article 22, imposes an obligation on the detaining authority to furnish to the person detained ground for his detention as soon as may be and give him the "earliest opportunity" of making a representation against the order of detention.

(ii) Since no other authority who should consider the representation, is mentioned, it can only be the detaining authority to whom it is to be made and which has to consider it.

(iii) The pre-emptory language in Clause 5 of Article 22 and Section 7 of the Preventive Detention Act would not have been necessary if the Board and not the Government had to consider the representation.

(iv) The petitioners had a constitutional right and there was on the State

Government a corresponding constitutional obligation to consider the representation whether they were made before or after the reference of the cases to the Advisory Board and that not having been done, the orders of detention cannot be sustained.

9. Thus, in view of ratio decided by the Apex Court, the petitioner had a constitutional right and there was a corresponding obligation on the State Government to decide the representation, whether it was made before or after the reference of the cases to the Advisory Board and that no having been done in the instant case also. The order of detention dated 08.06.2008 thus cannot be sustained.

10. Admittedly, in the present case, the Government has not decided the representation of the petitioner and it was expressed that since the advisory board has confirmed the detention order, therefore, in such circumstances there is no need to decide the representation of the petitioner, which in our view is not only contrary to the ratio decided by the Hon''ble Apex Court in the case of Pankaj Kumar Chakrabarty (Supra) but also against the provisions of Article 22, Clause-5 of the Constitution of India.

11. The Article 22, Clause 5 clearly provides an opportunity of making representation against the detention order. The right of safeguard against the illegal detention is provided by Constitution of India and there is also a remedy available to the petitioner under the National Security Act, 1980.

12. Similar view has also been taken by the Division Bench of this Court in the case of Anurag Singh v. State of Rajasthan & Ors., reported in 1995 RCC 584.

13. Having considered the rival submissions advanced by the respective parties and upon careful perusal of provisions of the National Security Act, 1980 as well as Constitution of India, we are of the view that the order of detention dated 08.06.2008 is per se illegal and deserves to be quashed and set aside, as the representation has not been considered or decided by the Government. Thus in view of ratio decided by the Hon''ble Supreme Court in the case of Pankaj Kumar Chakrabarty (Supra), the plea thus taken by the State Government that there is no necessity of deciding the representation as the advisory board has confirmed the detention order, is not sustainable in the eye of law.

14. In view of above discussion, the present Habeas Corpus Petition stands allowed. The detention order dated 08.06.2008 (Annex-4) is set aside and the petitioner shall be released forthwith, if not wanted in any other case.