
(2016) 04 RAJ CK 0089

In the Rajasthan High Court

Case No : . Habeas Corpus Petition No. 7 of 2016

Bhanwar Lal Parik

APPELLANT

Vs

State of Rajasthan & Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CriLR 954

Hon'ble Judges : Mr. Gopal Krishan Vyas and Ms. Jaishree Thakur, JJ.

Bench : Division Bench

Advocate : Mr. Mahesh Bora, Sr. Advocate assisted by Mr. Nishant Bora, Advocate, for the Appellant; S.K. Vyas, AAG cum Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ms. Jaishree Thakur, J.—The challenge in the present writ petition filed under Article 226 of the Constitution of India is to the order of detention dated 3.8.2015 passed under the Rajasthan Prevention of Ant-social Activities Act 2006, as well as to the order dated 22.9.2015 passed by the Advisory Board rejecting the representation filed thereafter.

2. The respondents while exercising their powers under Section 3 (i) of the Rajasthan Prevention of Anti-social Activities Act 2006 (for short "the Act of 2006"), detained the son of the petitioner by holding him to be "dangerous person" and "drug offender" Against the order of detention and arrest an representation came to be filed before the Advisory Board and the same was rejected on 22.9.2015.

3. Mr. Mahesh Bora, Senior Advocate along with Mr. Nishant Bora Advocate appearing on behalf of the petitioner have urged that the son of the petitioner does not fall under the definition of "habitual offender" or under the category of "drug offender" as defined under the Act of 2006. It is further argued that, while

that, while passing the impugned order dated 3.8.2015, the respondent relied upon a list of 26 cases purportedly pending against the detainee which is factually incorrect. Out of 26 cases relied upon, only 12 cases are pending at the present moment and the detainee has been acquitted in 11 cases. In the other three, the detainee has been convicted in one, acquitted in appeal in one case and in the third case he has been fined with Rs. 500/-. A detailed representation has been given before the Advisory Board but without adverting to any of the submissions therein, an order dated 22.9.2015 came to be passed by the respondent upholding the order dated 3.8.2015. It is further argued that there is no justification in detaining son of the petitioner in the year 2015 when apart from one case under the Narcotic Substances and Psychotropic Substances Act, 1985 (for short "the Act of 1985"), no other case has been registered against him in the said year. Reliance has been place on several judgments of this Court rendered in D.B. Civil Writ (Habeas Corpus) Petition No. 6123 of 2012 Kishan Singh v. State of Rajasthan and others, D.B. Civil Writ (Habeas Corpus) Petition No. 7850 of 2012, Bhikho v. State of Rajasthan and others, D.B. Civil Writ (.Habeas Corpus) Petition No. 1162 of 2015 Kisturi Devi v. State of Rajasthan and others, to urge that the detention order dated 3.8.2015 is illegal and untenable.

4. Per contra, Mr. S.K. Vyas, AAG cum Government Advocate has argued that the antecedents of the detainee were considered in its entirety and after due application of mind, the detention order was passed, which has been affirmed by the Advisory Board. It was on account of Various activities of the petitioner's son which caused eminent danger to the maintenance of the public order, that a need was felt to invoke the provisions of Act of 2006.

5. We have heard the learned Counsel for the parties and have perused the record of the case and have also perused the details of the cases registered against the detainee, which are as follows:-

S.No

Complainant

F.I.R. No. & Date & Police Station

Offence under Section

Present Position

1

Ghewarraj R/o Doli by caste Bishnoi, presently residing at Rajiv Gandhi Colony
98/2004, Chopasani Housing Board, Jodhpur 14.5.2014.

365, 149, 323 I.P.C.

Next Date 20.8.2015.

2

Bhoma Ram by caste Bishnoi, presently residing at Rajiv Gandhi Colony

8/2006 Pratapnagar 7.1.2006

147, 336, 427, 504/149 I.P.C.

Next Date 24.8.2015.

3

Ransingh

96/2007 Phalodi 8.5.2007

147,148, 341, 323, 325, 307, 427/119 I.P.C.

Exonerated under Section 307 at the time of argument and charges. Next Date 31.8.2015.

4

Jitendra R/o 17E 177 Chopasani Housing Board

275/2007 Pratapnagar 25.7.2007

302, 384, 327, 451 120B I.P.C.

Date fixed was 12.8.2015.

5

Prem Bhatia

136/2008 Sardarpura 31.3.2008

149, 385 I.P.C.

Next Date 31.8.2015.

6

Kaluram Prajapat R/o Baldeo Nagar

125/2009 Sardarpura 17.4.2009

408, 120B, 411, 182 I.P.C.

Next Date 6.8.2015.

7

Anand Singh

134/2009 Chopasani Housing Board 6.5.2009

147,148, 149, 307, 323, 427, 325 I.P.C.

Exonerated under Section 307 at the time of argument on charges and acquitted from charges under Sections 149, 323, 325, 427 due the compromise. Next date 24.4.2015.

8

Madina R/o Baldeo Nagar

194/2013 Pratapnagar 17.4.2013

458, 323 I.P.C.

Date fixed was 11.8.2014.

9

Shyamlal Bycaste Bishnoi R/o Rajiv Gandhi Colony

164/2013 Chopasani Housing Board 8.6.2013

427, 323, 452, 327 I.P.C.

Date fixed was 11.8.2015.

10

Rajkumar Prajapat R/o Baldeo Nagar

461/2013 Pratapnager 6.9.2013

427, 336 I.P.C.

Next Date 24.9.2015.

11

Dharmendra Prajapat R/o Baldevnagar

462/2013 Pratapnagar 6.9.2013

427, 336 I.P.C.

Next date 24.9.2015

12

Vidhyadhar Dudi

75/2015 25.2.2014

8/21 N.D.P.S, Act

Next date 26.8.2015.

6. Section 2 (c) of the Act of 2006 defines the term "dangerous person" and dangerous person means a person, who either by himself or as member or leader of a gang, habitually commits, or attempts to commit or abets the

commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, any of the offences punishable under Chapter V of the Arms act or any of the offence punishable under first proviso to sub-section (i), and sub-section (1-A) of Section 51 of the Wild Life (Protection) Act, 1972 or any offence punishable under Section 67 of the Information Technology Act, 2000. Section 2 (f) defines the term "drug offender", to mean a person who habitually imports any drugs in contravention of Section 10 of the Drugs and Cosmetics Act, 1940, manufactures for sale, or sells or stocks or distributes any drugs in contravention of Section 18 of the Drugs Act, cultivates any coca plant, opium poppy etc. in contravention of Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 2 (g) defines the terms "habitual", to mean a person, who habitually commits such offence on such term, would not include isolated, individual and dissimilar acts or omission. A bare reading of section shows that the petitioner cannot be categorized as dangerous person or a habitual offender to warrant any arrest and detention by exercising powers under Section 3 (1) of the Act of 2006. Most of the offences that the petitioner's son is facing are pertaining to the years from 2004 to 2009, whereas there were four cases lodged against him in the year 2013 under Sections 458, 323, 427, 452 and 336 of the Indian Penal Code. Out of these four cases lodged in the year 2013, two were lodged on the same date. A solitary case registered in the year 2015 under the N.D.P.S. Act of 1985 would not entitle the respondent to come to the conclusion that son of the petitioner is a "drug offender" as defined under Section 2 (f) read with 2 (g) of the Act of 2006 which legislation has been enacted to arrest and detain such drug offender, boot loggers, dangerous persons, property grabbers, indulging in immoral traffic and such dangerous activities that are likely to affect public order.

7. We are also of the opinion that cases pertaining to the years from 2004, 2006 to 2009 and in 2013 cannot constitute the basis of the detention of the son of the petitioner for maintenance of public order, since they have no proximity to the impugned order passed in the years 2015. Reliance can be placed on a Division Bench judgment rendered in *Imram @ Katya V. State of Rajasthan & Ors.*, D.B. Civil Writ (Habeas Corpus) Petition No. 58/2015 decided on 6.4.2015, wherein it has been held that:-

"We are also of the view that said acts which were allegedly committed as back as in the years between 2002 and 2012, have no proximity to the impugned order of detention passed in the year 2014 and, therefore, cannot constitute the basis of detention of the petitioner for maintenance of public order."

8. Relying upon the judgment rendered in *Dinu Khan v. The State of Rajasthan & Ors.*, D.B. Habeas Corpus Petition No. 7824/2014, it has been argued by learned Counsel appearing on behalf of the respondent that the order of detention is legal. A perusal of the said judgment reveals that the Court on going through the record of the case noted that the petitioner was indulging in theft of batteries, wires and other equipment pertaining to generation of electricity by wind mills. It

was noted as under:-

"In the case in hand the petitioner was found indulged in theft activities of batteries, wires and other equipments with wind mills generating electricity. The District Magistrate while making request to the State Government for initiating process under the Act of 2016 and further while passing the order of detention, in quite unambiguous terms stated that the activities of the petitioner are prejudicial to the public order as much is that is creating disconnection of electricity making the entire fencing at border unsecured resulting into invasion in Indian territory by foreign nations. The activities of the petitioner are creating problem for national security and also to the power generation system. The system is an important aid for maintaining public order in entire border area. As such, the details given by the District Magistrate are sufficient to arrive at the conclusion that instant one is a case where an action has been taken to prevent injury to the public order."

The facts of the aforesaid case are not applicable to the case in hand since the record does not reveal the petitioner is indulging destruction of national, property or involved in activities which would be against national interest, public at large or any section thereof, or a grave or widespread danger to life or public; health.

9. The Advisory Board declined to interfere in the matter without I considering the important aspect that the detenue out of the 26 cases mentioned against him had in most cases either been acquitted or the matter had been compromised. A perusal of the list of the cases pending against the petitioner would reflect the they are either cases which had been filed in the years pertaining to 2004, 2006-2009, 2013 and one under the N.D.P.S. Act of 1985, in the year 2015 and only 12 cases are pending against the detenue. The Advisory Board too has not appreciated the matter in its true perspective while dismissing the representation filed to it. Therefore, we are of the opinion that the detention order dated 3.8.2015 passed by the Executive Magistrate-cum-Police Commissioner, Jodhpur while exercising powers under Section 3 of the Act of 2006 and the order passed by the Appellate Authority are unjustified and deserve to be quashed.

10. The detenue Devender @ Montu is in custody 3.8.2015 and in our opinion and on the basis of the material available with us on record, it cannot be said that the detenue is a "dangerous person" or "drug offenders" as defined under the provisions of the Act of 2006, against whom a detention order would justified.

11. Therefore, the Habeas Corpus Petition is allowed and the impugned orders dated 3.8.2015 of the Executive Magistrate-cum-Police Commissioner, Jodhpur and 22.9.2015 of the Advisory Board, Jaipur are hereby set aside, with a further direction that son of the petitioner be released immediately, in case n required in any other case.