
(1987) 11 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous (Habeas Corpus) Petition No. 16234 of 1987

Bhullu alias Jahoor

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 13, 3, 3(2), 3(3)
Penal Code, 1860 (IPC) — Section 147, 149, 323, 336, 427

Citation : (1988) 12 ACR 111

Hon'ble Judges : R.K. Shukla, J; Madan Mohan Lal, J

Bench : Division Bench

Advocate : Udai Karan Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

Madan Mohan Lal, J.—This is a habeas corpus petition under Article 226 of the Constitution of India filed by Bhullu alias Jahoor against an order of detention dated 19-5-1987 passed by the District Magistrate, Kanpur Nagar u/s 3(2) of the National Security Act.

2. According to the grounds of detention, which were served along with the detention order, the Petitioner on 4-5-1987 at about 10 p.m. was sitting in his shop situate in Mohalla Ludhaura, Police Station Colonelganj, Kanpur City in front of a mosque. Some Muslims after making prayer in the mosque were standing there. One Mahesh and Munna, abusing and quarrelling with each other, reached there. At that time the Petitioner asked both those persons as to why they were fighting on which Mahesh, after abusing the Petitioner, said as to why he was interfering with them. The Petitioner then started inciting the Muslims who were assembled there and asked them that the Hindus were qafirs and during Ramzan they caused interference in their Namaz and " Travi " and they, by making a temple, had taken possession over Babri Mosque as well. As a result of the said incitation the Muslims started pelting stones on Hindus, who were present there,

and also on the houses belonging to Hindus. The Petitioner, along with his companions, by sprinkling kerosene set fire to a taxi No. UTI 6176, belonging to Munna Lal, which was parked in front of Shanker Ji Temple. Rioting then took place between Muslims and Hindus which resulted in pelting stones, arson, firing and destruction of properties. The residents of the locality became terrorised and rushed to their houses and closed the doors. Peace-loving people started running hither and thither. The peace of the community was disturbed. Reports of the said incidents were lodged by Rajjan Lal and Sub-Inspector Jatindra Kumar Rastogi, on which cases were registered. It was further stated that the Petitioner went underground and till 10-5-1987 he kept inciting the Muslims which caused an apprehension that in future as well he will indulge himself in the activities which will disturb public peace. The Petitioner surrendered in Court on 11-5-1987.

3. As already observed, the detention order was passed against the Petitioner on 19-5-1987. The said detention order, along with grounds of detention, passed by the District Magistrate, Kanpur Nagar was served on the Petitioner in jail on the same day, i.e. on 19-5-1987. The Petitioner submitted his representation on 1-6-1987 and the same was rejected by the State Government on 6-6-1987. The grounds of detention, along with the representation of the Petitioner, were placed before the Advisory Board, which considered the same in its meeting on 2-7-1987. The Advisory Board found sufficient cause for the detention of the Petitioner. The State Government, by its order dated 13-7-1987 confirmed the detention order.

4. The detention order has been challenged on various grounds. Firstly, the learned Counsel for the Petitioner has referred to us the report lodged by Sub Inspector Jatindra Kumar Rastogi at Police Station Colonelganj on 4-5-1987 at 11.45 p.m. on the basis of which crime case No. 89 of 1987 under Sections 147, 149, 435, 436, 336, 427, 323 and 505 IPC was registered, and urged that in the said report the Petitioner was not implicated and that he was also not mentioned among those persons, who were arrested at the spot. The learned Counsel for the Petitioner further submitted that in the said report it was not stated that the Petitioner was amongst those persons who had set the aforesaid taxi on fire. It may be observed that according to the said report when the aforesaid Sub-Inspector Jatindra Kumar Rastogi was on his duty he got information that rioting between the Hindus and Muslims was going on in Mohalla Ludhaura near the shop of the Petitioner. Thereupon he reached there and found that rioting was taking place. He further stated in his report that the aforesaid taxi had also been set on fire. It is true that in his report Sub-Inspector Jatindra Kumar Rastogi did not name the Petitioner for setting the aforesaid taxi on fire. In fact, in the said report of the Sub-Inspector Jatindra Kumar Rastogi the names of those Muslims who set the aforesaid taxi on fire were not mentioned. With respect to the same Sri. Anurag Goel, the then District Magistrate, Kanpur Nagar, who had passed the detention order against the Petitioner, in his counter affidavit, has stated that he had perused the general diary and both the reports, i.e. the first information report lodged by Sub-Inspector Jatindra Kumar Rastogi and the report made by

Rajjan Lal and that whereas the report of the Sub-Inspector Jatindra Kumar Rastogi was only general that some of the miscreants had set fire to the taxi the report of Rajjan Lal, who was in his house near which the taxi belonging to his brother-in-law, namely, Munna Lal, was parked was specific that the Petitioner had set the aforesaid taxi to fire after sprinkling kerosene on the same. The District Magistrate has also stated that from the said report of Sri Rajjan Lal it was apparent that the police had arrived at the spot after the taxi had started burning and that therefore the police personnels were not able to see the actual miscreants setting the taxi to fire. In our view, if on the basis of the report of Sri Rajjan Lal etc. the District Magistrate was satisfied that it was the Petitioner who had incited the communal feelings among the Muslims and had also set the aforesaid taxi on fire, it cannot be said that there was no material before the District Magistrate for passing the impugned order of detention against the Petitioner.

5. The learned Counsel for the Petitioner has placed reliance on *Vijay Narain Singh Vs. State of Bihar and Others*, and has urged that our Constitution did not give a carta blanche to any organ of the State to be the sole arbiter in the matter of the preventive detention and that the preventive detention was not beyond judicial scrutiny. There could be no dispute with regard to the said principle. It is well established that adequacy or sufficiency of materials is not a good ground of challenge. With regard to the same the Hon"ble Supreme Court in the case of *Vijai Narain Singh (supra)* has observed that adequacy or sufficiency is not a ground of challenge. In *Fazal Ghoshi v. State of U.P.* AIR 1987 SC 1887 as well it was observed that in a matter of preventive detention the satisfaction of the District Magistrate was subjective in nature and that sufficiency of material could not be looked into by the Court. In our opinion, when there was existence of material against the Petitioner that he had incited the communal feelings amongst the Muslims which resulted in rioting and also when he along with other Muslims at that time had set fire to a taxi belonging to a Hindu, this Court cannot put itself in the place of the District Magistrate and judge as to whether the said material was or was not sufficient to pass the detention order.

6. The learned Counsel for the Petitioner has further urged before us that there was no previous criminal history of the Petitioner and that, therefore, it was not proper for the District Magistrate to pass the aforesaid detention order against the Petitioner. In our opinion, the said argument is misconceived because irrespective of the past history of a person if it is found that his present action conduct was so grave that it was likely to disturb the public order then in order to prevent him from acting in a manner prejudicial to the maintenance of public order he could be detained.

7. The learned Counsel for the Petitioner has also urged before us that the District Magistrate had not applied his mind to the facts of the case but had acted mechanically. In our opinion, the said submission has no force. Before passing the impugned order of detention, the District Magistrate perused the first

information reports made by Rajjan Lal and Sub-Inspector Jatindra Kumar Rastogi as also other reports. The said reports constituted sufficient material for the subjective decision of the District Magistrate that the Petitioner was indulging in acts prejudicial to the maintenance of the public order and that in order to prevent him from so acting it was necessary to detain him.

8. The learned Counsel for the Petitioner has further submitted before us that it was a case of law and order and not of public order, within the meaning of Section 3(2) of the National Security Act. This argument is without any basis. In this case there was sufficient material to show that the Petitioner after stating that Hindus were qafirs, and during the month of Ramzan were creating obstructions in the way of Muslims to offer Namaz and Travi etc. and by constructing a temple had taken possession over the Babri Mosque, had incited the Muslims, as a result of which serious riots took place between the two communities. In the said rioting the Petitioner had taken an active part by burning taxi belonging to the other community. The said action of the Petitioner cannot be said to be against an individual but the same was against the community at large. The same did not merely touch the problems of law and order but had affected the public order. It had obviously disturbed the even tempo of the life of the community at large. The ratio of public order and law and order depends upon the impact of the act. If the impact of the act is confined to an individual only, it will be a matter of law and order while if the act will have any impact upon a large section of the community, the act will fall within the realm of public order. This is a question of (sic) and the extent of the impact of the act upon the society which is vital. The public order embraces more of the community than law and order. One of the vital factors is to consider the effect of the act on the even tempo of the life of the community. Judging from this angle we are of the opinion that it was not a case of law and order but was a clear case of public order and that, therefore, the District Magistrate had not committed any illegality by passing the detention order against the Petitioner.

9. The learned Counsel for the Petitioner has referred to us *Fazal Ghosi v. State of U.P.* AIR 1987 SC 1877 in which it has been observed that the preventive detention was not intended as a punitive measure or by way of punishment and that the power to detain a person can be exercised only with a view to preventing him from acting in a manner which may prejudice any of the considerations set forth in Section 3 of the National Security Act and on the basis of the same, it has been argued that when in this case there was no material to show that in future as well the Petitioner was likely to repeat the misconduct or do any thing else which can be prejudicial to the maintenance of public order, the District Magistrate was not justified in passing the impugned order. It may be observed that the facts before the Hon"ble Supreme Court in that case were entirely different, In that case there was considerable agitation amongst Muslim community consequent upon the opening of the Ram Janam Bhumi Temple at Ayodhya, Faizabad. Several members of the community were returning from the mosque after making prayers when in the way they were addressed by Fazal

Ghosi and his son Wahid inciting them to beat the police and the P.A.C. as a result of which the crowd commenced pelting stones and started firing arms on the government officials and the police personnels assembled there. It may be observed that in that case the detenus had incited the Muslim community to beat the Police and P.A.C, which were obviously present there. In this case before us, on the other hand, besides the action of the Petitioner proclaiming the Hindus as qafirs etc. and taking active part in the rioting there was a specific report dated 12-5-1987 (Annexure "5" to the petition) made by Sri Gorakh Nath Singh, Circle Inspector, Police Station Colonelganj, Kanpur City in which, among other things, he stated that after the registration of the aforesaid criminal case against him the Petitioner went underground till 10-5-1987 and continued his activities to incite the Muslims which had given rise to an apprehension that in future as well he will go on indulging in such activities which will have adverse effect on the maintenance of public order. Therefore, we are of the opinion that it cannot be said that in this case there was no material before the District Magistrate to form an opinion that with a view to preventing the Petitioner from acting in a manner prejudicial to the maintenance of public order it was necessary to detain him under the provisions of the National Security Act.

10. The learned Counsel for the Petitioner has further referred to us a copy of G.D. No. 10 dated 9-5-1987 in which, inter alia, it was stated that the Petitioner was mainly responsible for the rioting and he had not been arrested so far and that he was secretly inciting the Muslims and in the light of the same he has argued that the said ground of detention of the Petitioner for inciting the Muslims secretly was quite vague and that on the basis of the same the detention order could not be passed against him. We find no merit in this argument. The aforesaid words cannot be read in isolation but will have to be read along with all the material. As already observed, Sri Gorakh Nath Singh, Circle Inspector, Police Station Colonelganj, Kanpur City, in his report dated 12-5-1987 clearly made out a case of future apprehension against the Petitioner. We find no vagueness in the grounds of detention.

11. The learned Counsel for the Petitioner has also challenged the impugned order on the basis of malafide. In this context the learned Counsel for the Petitioner has submitted that the police personnels of Police Station Colonelganj, Kanpur City had committed a murder of one Mahbub Alam, a rikshaw puller, in which the Petitioner was cited as a witness and that because the Petitioner did not submit to the pressure of the police in the said case, hence this order of detention was not passed against him. Names of the police personnels who had exerted pressure on the Petitioner have not been disclosed. The allegations made by the Petitioner are quite vague and, therefore, no weight can be attached to the same.

12. The learned Counsel for the Petitioner has, however, referred to us Annexure "8" to the petition and has argued that the same was a telegram which was given by the Petitioner against the aforesaid Sub-Inspector Jatindra Kumar

Rastogi on account of which he was annoyed with him. The said Annexure "8" by itself from appearance does not appear to be a telegram. No postal receipt has been filed to show that any telegram had been given on any particular date. The name of the addressee is not mentioned in the said Annexure "8". The name of the sender as also the date on which the said Annexure "8" was despatched are also not mentioned. Therefore, it is not possible to give any weight to the said Annexure "8".

13. The learned Counsel for the Petitioner has also referred to us the detention order and has argued that the period of detention was not mentioned in the said order and hence the same, in view of Sub-section (3) of Section 3 of the National Security Act, was bad. This argument is obviously misconceived because, as was appreciated by the learned Counsel for the Petitioner during the course of arguments, the period of three months mentioned in the said Section 3(3) of the National Security Act relates to the period for which the State Government may authorise and direct the District Magistrate to exercise the powers as provided in Section 3(2) of the said Act. It may be observed that the maximum period of detention is prescribed by Section 13 of the National Security Act. Therefore, there was no defect in the impugned order of detention if the period of detention was not specified.

14. The learned Counsel for the Petitioner has further argued before us that the State Government could not have rejected the representation of the Petitioner before the receipt of the report of the Advisory Board. In this respect, it may be observed that the State Government had rejected the representation of the Petitioner on 6-6-1987 and the report of the Advisory Board was subsequently received in the month of July, 1987. It may be noted that whereas the Government has to consider the representation made by a detenu in order to ascertain as to whether the order of detention is in conformity with its powers under the relevant law, the Advisory Board considers such representation from the point of view of arriving at its opinion as to whether there was sufficient cause for detention. In this respect reliance is placed on *Fazal Ghosi and Others Vs. State of U.P. and Others*, in which it has been observed that there is "dual obligation" on the Government and the dual right in favour of the detenu (1) to have his representation, irrespective of the length of detention, considered by the appropriate government and (2) to have once again the representation in the light of the circumstances of the case considered by the Board before it gives its opinion. Therefore, we are of the opinion that it was proper and legal for the State Government to consider and reject the representation made by the Petitioner even before the report of the Advisory Board was received by it. No other point has been raised before us in this petition.

15. In view of what has been discussed above, we find no merit in this habeas corpus petition and the same is accordingly dismissed.