
(2013) 11 AHC CK 0063

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No"s. 35645 and 37179 of 2013

Charan Singh @ Pappu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 10 ADJ 438 : (2014) 1 ALJ 358 : (2014) 84 ALLCC 168

Hon'ble Judges : Mushaffey Ahmad, J;D.P. Singh, J

Bench : Division Bench

Advocate : Jitendra Kumar Shishhodia, for the Appellant; Manish Trivedi and Ranjan Srivastava, for the Respondent

Judgement

1. Both these Habeas Corpus petitions are directed against even dated but separate orders of detention passed by the District Magistrate, Shamli, u/s 3(2) of the National Security Act, 1980 (herein after referred to as the Act) detaining the two petitioners vide the two different orders and both dated 11.5.2013. The facts involved and the incident are common to both the petitions and so also the question of law and arguments are also common to both. Therefore, with the consent of all the parties, they were tied together and are being decided by this common order.

2. Heard learned counsel for the respective parties and perused the records of both the petitions and with their consent they are being disposed off under the rules of the Court.

3. Brief facts are that a First Information Report was lodged against 39 named persons, including the two petitioners, on 26.3.2013 at about 8.30 pm at police station Kotwali Kairana, by Asif son of Anees under Sections 147, 148, 149, 392, 436, 153A, 295, 295A, 298, 120B, 352, 504,506, 323, 427 of the Indian Penal Code read with Section 7 of the Criminal Law Amendment Act. It was alleged therein that while he alongwith 7 or 8 persons were in the Mosque, at about 7.00 p.m. on 26.3.2013, there was sloganeering from the loudspeaker of the village

Mandir of "Jai Bajrang Bali" and "Har Har Mahadeo" and exhorting to kill all the Muslims of the village and to demolish the Mosque and there-after the named 39 persons came to the village Mosque armed with sticks and iron rod and started vandalising the village Mosque and tore the Holy Quran and set the Mosque on fire and they also beat up the Imam and snatched Rs. 28,000/- from him. This led to widespread terror in the village and they ran away to save their lives and the incident vitiated the communal harmony and public order. After the report the police started its investigation and recorded the statements of eye witnesses Naushad on 26.3.2013, Asif on 27.3.2013, Munshad and Shahid on 31.3.2013 Inam and Naseem on 3.4.2013 and Farookh on 10.4.2013 u/s 161 Cr.P.C. Both the petitioners and 14 others were arrested on 27.3.2013 and they applied for bail but it was refused by the Magistrate where after they applied before the Sessions Court where 13.5.2013 was fixed for hearing.

4. In this background the Station Officer, (the Sponsoring Officer) submitted a report dated 6.5.2013 to the Superintendent of Police, Shamli alleging therein that the two petitioners who have a criminal bent of mind and have communal tendencies had in a planned and premeditated manner, to spread communal hatred first indulged in exhorting from the Mandir loudspeaker Mal Bajrang Bali" and "Har Har Mahadeo" and declaring to kill each Muslim of the village and demolish the Mosque and then led a mob of 46 named persons armed with sticks, iron rods and weapons, entered the Mosque and vandalised it, tore the Holy Quran and set the Mosque on fire and caught hold of the Imam and severely beat him with intention to kill, creating terror and fear and thereby polluted the communal harmony and disturbed public order. Thus, he recommended the invoking of the provisions of the Act against the two petitioners for preventive detention. The Superintendent of Police on the very next day forwarded his own recommendation based upon the report of the Station Officer, to the District Magistrate, Shamli. The District Magistrate thereafter passed the impugned detention orders and also supplied the grounds of detention. The representation of the petitioners were rejected by the competent authorities and as such they have approached this Court.

5. Several arguments have been canvassed on their behalf but the Court is dealing with only two of the arguments as they go to the root of the matter.

6. It is firstly urged that the cross version of the incident which was lodged through an application u/s 156(3) Cr.P.C. was never placed before the detaining authority and since it was a relevant material, the satisfaction recorded stood vitiated.

7. Let us first examine the law on this point.

8. The Apex Court in several cases, including in the latest judgment in Baby Devassy Chully @ Bobby Vs. Union of India (UOI) and Others, , has reiterated its earlier decision in A. Sowkath Ali Vs. Union of India and Others, , where it held that on the facts of a given case all relevant material and documents having a

bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before it and if relevant material is withheld, it would vitiate the satisfaction. More than two decades ago in *Ayya alias Ayub Vs. State of U.P. and Another*, , the Apex Court went on to hold that if any relevant material is not considered by the detaining Authority, non application of mind can be inferred. Our Court in *Tahseen Vs. Union of India and Others*, , has held that the counter version should be placed before the detaining authority irrespective of its worth.

9. In this background we may examine the facts.

10. A perusal of the record shows and it is so pleaded, without denial, that effort was made to lodge an F.I.R. on 27th and 28th March, 2013 in vain, from the side of the Hindus, forcing them to file an application on 9.4.2013 u/s 156(3) Cr.P.C. before the concerned Magistrate for a direction to the police to lodge their F.I.R. which was allowed and the F.I.R. was lodged on 17.4.2013 as case Crime No. 183 of 2013 at the police station under Sections 147, 148, 153A, 295A, 298, 337, 436, 395 IPC. The allegation in the F.I.R. was that, 26.3.2013 was the date for "Holika Dahan" (lighting of the Holi pyre) and a Holi pyre was placed near the village Shiv Temple where large number of Hindu ladies, girls, children and males made their offerings the entire day including in cash, as the pyre is considered to be a Deity to be lit at the appointed auspicious time. The vicinity of the pyre is inhabited by the Muslim community and every year they used to create obstruction in lighting the pyre. In the evening when the Priest Pappan, was going to the Shiv temple at about 6 p.m. to deposit the collected Rs. 20,000/- and to await the auspicious moment to light the fire, 18 named Muslims armed with weapons accosted him and looted the money and after lifting their lungis they urinated on the pyre and after sprinkling kerosene over it set it afire while abusing the Hindu community declaring that they would not allow any "Holika Dahan" and this desecration created fear, panic, tension and anger amongst the community members in the village.

11. Admittedly, this FIR was never placed before the detaining authority. It is apparent that the two incidents are related to each other and they are extremely proximate in time. There are thus two versions of the entire episode. The Court, not even for a moment, means to justify the action of the majority community, but it would be a relevant fact to be considered by the detaining authority, because the grounds of detention and order recite that the act was planned and premeditated and therefore it could have shed some light on this aspect as to whether the latter incident was preplanned, premeditated or was a result of a burst of emotion or anger. However, that is a matter in the domain of the detaining authority because there is no method to ascertain how the mind of the detaining authority would have reacted if this fact was brought before it. Much stress has been laid by the J learned Government Advocate that the police had submitted a final report and it was not relied upon by the detaining authority and therefore it would not tell upon the legality of the order. Whether a final report

was submitted or it was not relied upon would be immaterial, because even withholding a relevant material would vitiate the subjective satisfaction because, as observed earlier, it is not possible to find out how the mind of the detaining authority would have reacted if these facts were placed before it.

12. It is then urged that the detaining authority did not apply its mind to the record and mechanically passed the order, merely on the basis of the report submitted by the Sponsoring Authority, which was improvement on the FIR and against the material on record and, held that the petitioner was leading the group in the incident.

13. It has to be kept in mind that the incident is one and the grounds of detention are identical in both cases. In the FIR and the statement of the eye witnesses, there is no mention that any of the two petitioners gave a call from the Mandir loudspeaker for killing or demolishing the Mosque. Similarly, in none of the two documents there is any allegation that the petitioners or the mob was carrying any weapon except for sticks and iron rods, which were specifically mentioned therein. Further, in the case of Charan Singh, he is alleged to be the leader who led the mob of 46 named persons inside the Mosque and the other petitioner, Jeetendra, is part of the mob. Similarly, in the case of Jeetendra, he is alleged to be the leader who led the same named persons in which Charan Singh is also in the mob. Both the recommendations though are separate, but both are of the same date and were considered by the detaining authority on the same day. It is not the case of the State that the two were leading jointly, but they have been singled out of their respective mobs, which otherwise consists of the same set of persons. It creates doubt whether mind was applied?

14. The grounds of detention state that the petitioner led the mob and indulged in activities noted above and in a planned manner disturbed the communal harmony between the two communities and the authority has relied upon the statements of the eye witnesses to record this satisfaction. The copies of the statements were also supplied to them and are on record. A perusal of all those statements show that there was absolutely no averment in any of the statements of the witnesses that any of the two petitioners led the mob nor any specific or special role was assigned to either of the two. In all the statements a general allegation has been made against all the 39 persons. The factum of each of the petitioner leading the mob finds place only in the respective reports of the Sponsoring Authority but that too is based upon the statements u/s 161 Cr.P.C., The learned State Counsel has not been able to show any evidence to support the improvement made in the report. It was incumbent upon the detaining authority to have scrutinized the documents on which the report was based and it would not be sufficient to blindly rely upon the report. This clinches the issue that the detaining authority did not apply its mind while passing the order and did not make any effort to even go through the material which formed the basis of the report but blindly parroted the report otherwise, there is no answer to the question as to how the entire story changed.

15. Both the issues, taken either singly or jointly, render the detention orders illegal suffering from the vice of non-application of mind and withholding a relevant piece of material which could have a bearing on the subjective satisfaction of the authority.

16. Accordingly, both the writ petitions stand allowed and the respective detention orders dated 11.5.2013 passed by the District Magistrate, Shamli against both the petitioners and annexed to their respective petitions are hereby set aside. The petitioners shall be released from detention and set at liberty forthwith, unless they are confined in some other case. In the circumstances of the case, the parties shall bear their own cost.