

(2013) 09 AHC CK 0085

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 2595 of 2013

Cheeku Badla

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 1 ACR 78 : (2013) 8 ADJ 513 : (2014) 3 ALJ 744 : (2013) 83 ALLCC 520

Hon'ble Judges : Ravindra Singh, J;Anil Kumar Agarwal, J

Bench : Division Bench

Advocate : Chandrakesh Mishra and Daya Shanker Mishra, for the Appellant;
Manish Trivedi, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned A.G.A. for the State of U.P.

This Habeas Corpus Writ Petition has been moved on behalf of the petitioner Cheeku Badla with a prayer to set aside the detention order dated 19.11.2012 passed by District Magistrate, Meerut in exercise of the powers conferred u/s 3(2) of the National Security Act and to sat the petitioner on liberty forthwith.

The facts in brief of this case are that the District Magistrate, Meerut passed the order dated 19.11.2012 in exercise of the powers conferred u/s 3(2) of the National Security Act (Herein-after referred to NSA) and the petitioner has been detained in District Jail, Bulandshahr as ordinary detenu. The copy of the detention order, ground of the detention and all the connected papers were served upon the petitioner on 19.11.2012. The impugned order dated 19.11.2012 has been approved by the State Government on 27.11.2012. The above mentioned documents were also sent to the Central Government by the State Government through speed post letter dated 29.11.2012, the case of the petitioner was referred to Advisory Board by the State Government by sending

the detention order, the ground of detention and all other connected papers on 29.11.2012. The representation of the petitioner dated 28.11.2012 alongwith parawise comments forwarded by the District Magistrate, Meerut to the State Government vide letter dated 1.12.2012, the same was received in the concerned section of the State Government on 13.12.2012. The State Government sent its copy and parawise comments thereon to State Advisory Board and Central Government vide separate letters dated 4.12.2012, the representation of the petitioner was rejected on 7.12.2012 by the State Government. The rejection of the representation was communicated to the petitioner through district authorities by radiogram dated 10.12.2012.

2. The Advisory Board by its letter dated 11.12.2012 informed the State Government that the case of the petitioner will be taken up for hearing on 13.12.2012 and directed that petitioner be informed that if he desires to attend the hearing before the Advisory Board alongwith his next friend (None Advocate) he could do so and be allowed to take his next friend alongwith him, if he so requested. The petitioner appeared before the Advisory Board on the date fixed. The Advisory Board after the petitioner considered his representation and other documents gave its reply that there was sufficient cause for detention of the petitioner. This report and the record of the petitioner were received in the concerned section of the State Government through Registrar, U.P. Advisory Board letter dated 26.12.2012 on 27.12.2012. On receipt thereon the State Government once again examined afresh the entire case of the petitioner alongwith the opinion of the Advisory Board and took the decision to confirm the detention order on 1.1.2013 and also for keeping the petitioner under detention for a period of 12 months from 19.11.2012. The representation dated 29.11.2012 sent to the Central Government has been rejected on 19.12.2012.

3. Being aggrieved from the impugned order of detention and the continuance of the detention the petitioner has moved this habeas corpus writ petition. It is submitted by counsel for the petitioner that the District Magistrate, Meerut has not applied his judicial mind and his satisfaction to pass the impugned order dated 19.12.2012 was not subjected. He passed the impugned order in a routine manner on the report submitted by the police authorities. The petitioner is a law abiding person, due to act done by him the public order has not been adversely affected. There was no real possibility of releasing the petitioner on bail. The petitioner has not been released on bail in case crime No. 139 of 2012. The copy of the detention order and its impugned has not been properly supplied to the petitioner and the connected documents has also not been supplied to the petitioner. The provisions of Section 3(2), 3(4), 3(5), 8, 10, 12 and 14 of NSA have not been applied with. The order of approving and confirming the detention order by the State Government is not proper and without proper consideration the representation of the petitioner has been rejected by the State Government as well as the Central Government. There is no undue delay in filing the representation by the State Government and the Central Government. The State Advisory Board has also not applied his mind in giving the opinion that there was

sufficient cause to pass the impugned order. There was no subjective satisfaction of detaining authority, to record that there was a real possibility of releasing the petitioner on bail", it was based on information given by the petitioner. There was no sufficient material before the detaining authority to satisfy him that after releasing on bail the petitioner shall indulge in pre-judicial activities. In such circumstances, the impugned order may be set aside and the petitioner may be set at liberty forthwith.

4. In reply to the above contention, it is submitted by the learned A.G.A. that the petitioner is a hardened criminal. He is involved in many criminal cases, the impugned order has been passed on the basis of the incident dated 12.4.2012, which was committed in the city of Meerut by three unknown miscreants in which indiscriminate firing was done by the miscreants, consequently the deceased Pavitra Maitrey and Sunil Yadav sustained injuries, both the injured were taken to Chaurasiya Nursing Home where they were admitted, Pavitra Maitrey was declared dead, the injured Sunil Yadav remained in hospital where operation was done, during investigation the name of the petitioner and other accused persons came into light. The allegation against the petitioner is that the petitioner provided weapons to Udai Veer Singh, Johny @ Vineet and Kapil Katariya who committed the alleged offence, they were hired by Badan Singh @ Baddo. The alleged incident had taken place in front of the gate of R.G. College, Meerut due to the firing done a panic was created and the atmosphere of fear and terror was created, the shop keepers shut down their shops and went to their residence by closing the shops. The District Magistrate has not committed any error in passing the impugned order, because due to the above mentioned act committed by the petitioner and others co-accused persons, public order was disturbed, the subsequent order as of approving and confirming the detention order, deciding the representation of the petitioner and its communication have been properly passed in accordance with law. The communication of the order was also properly made to the petitioner. The petitioner himself appeared before the Advisory Board, the Advisory Board communicated the information after considering all the facts and circumstances of the case, there was sufficient cause to pass the impugned order. There was real possibility of releasing on bail, circumstances were properly satisfying the detaining authority that there was real possibility of releasing on bail and may indulge in prejudicial activities after releasing on bail. The impugned order and subsequent detention of the petitioner, under National Security Act is not illogical, in any manner. The present petition is devoid of merits, the same may be dismissed.

5. Considering the submission made by the learned counsel for the petitioner and the learned A.G.A. for the State of U.P. and from the perusal of the record it appears that in the grounds of detention, it is mentioned that the petitioner is making efforts/trying to get the bail but for recording such satisfaction there was no material before the detaining authority, even the sponsored authority has not committed any error to show that the petitioner was trying or making efforts for releasing on bail, merely on the ground that the detenu was trying to release or

trying for releasing on bail, is not sufficient to satisfy the detaining authority to answer that there was real possibility of releasing the detenu on bail and he shall involve in prejudicial activities after releasing on bail, this ground has been taken on the basis of information given by the Pairokar of P.S. Lalkurti to verify this information detaining authority did not summon the record by which the bail application of the petitioner was rejected by the Additional District & Sessions Judge, Court No. 18 Meerut and the application moved before the High Court, shows that the such satisfaction recorded by the detaining authority is not subjective but it is based on hearsay even on the basis of information given by the Pairokar of P.S. Lalkurti detaining authority has not recorded his satisfaction that there was real possibility of releasing of the petitioner on bail. The Supreme Court of India observed in the case of Haradhan Saha Vs. The State of West Bengal and Others, , in its paragraph No 35 that "where the concerned person is actually in jail custody at the time when the order of detention is passed against him, and is not likely to be released for a fair long time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in the activities which would jeopardised the security of the State or the public order." The Supreme Court have laid down principles as to when the such detention order can be passed, In this regard, the leading case is in Kamarunnissa and Others Vs. Union of India and another, ; which has been followed in the case of T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, ; Union of India (UOI) Vs. Paul Manickam and Another, ; Union of India v. Paul Manickam and another. It has been held by the Supreme Court of India in paragraph 13 of Kamarunnisa case:

From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question if before a higher Court.

The above mention conditions should be satisfied for the above valid detention or against the person in custody, one of the condition is that there should be real possibility of the person being released on bail.

In the present case, detaining authority has clearly mentioned in the ground of detention that it has been informed by the Pairokar of P.S. Lalkurti that the petitioner was trying for release on bail, he moved the applications before the C.J.M. Meerut and Additional District & Sessions Judge, Court No. 18, Meerut, the

same were rejected, thereafter, he moved a bail application before the Allahabad High Court, the same was pending, but he has not recorded the satisfaction that there was real possibility of release on bail, which vitiates the impugned order. In the present case, the petitioner is not named in the F.I.R. subsequently, he has been released on bail by the Hon"ble S.C. Agarwal, J. on 17.2.2012 in criminal misc. bail application No. 3461 of 2012 in case crime No. 445 of 2012 under Sections 302, 394, 120B I.P.C. P.S. Sadar Bazar district Meerut. There is no need to discuss other points raised by the learned counsel for the petitioner, in view of the above discussion we come to the conclusion that the "satisfaction" of the detaining authority that there was real possibility of his being released on bail, has not been disclosed in the grounds of detention, it vitiates the impugned order dated 19.11.2012, therefore, the impugned order dated 19.11.2012 is hereby set aside.

Let the petitioner be released from jail forthwith unless he is not wanted in any other case.

Accordingly this petition is allowed.