
(2012) 11 AHC CK 0054

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 19858 of 2012

Dushyant

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 41
National Security Act, 1980 — Section 10, 3, 3(2), 3(3), 3(4)
Penal Code, 1860 (IPC) — Section 411, 420, 489A, 489B, 489C

Citation : (2013) 2 ACR 2330 : (2013) 3 ALJ 333

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

Bench : Division Bench

Advocate : Manoj Kumar Srivastava, for the Appellant; Nitin Gupta, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Manoj Kumar Srivastava, learned counsel for the petitioner, learned A.G. A. for the State of U. P. and Sri Nitin Gupta, learned counsel appearing on behalf of Union of India. This petition has been filed on behalf of Dushyant alias Satendra with the prayers to:

A. issue a writ order or direction in the nature of Habeas Corpus commanding the respondents to release the detenu/petitioner at liberty forthwith.

B. issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

C. award cost of the petition to the petitioner.

2. The facts, in brief, of this case are that the order dated 22.12.2011 has been passed by District Magistrate, Aligarh in exercise of powers conferred u/s 3(3) of National Security Act (hereinafter referred to as "NSA") by which the petitioner has been detained as an ordinary prisoner in District Jail Aligarh u/s 3(2) of NSA. The grounds of detention are also annexed along with detention order dated

22.12.2011. The main ground of detention is that petitioner and his associate Vipin were apprehended by the police on 9.10.2011 at 4.30 p.m., their another associate successfully escaped from the alleged place of incident, on search made by police, 49 notes having the denomination of Rs. 100 bearing No. 8HD498391 were recovered from the possession of the petitioner and from the possession of the co-accused Vipin. 50 notes having the denomination of Rs. 100 bearing the same numbers were recovered and from their Honda City car No. U.P. 75F 6823, one printer and other articles used in manufacturing the counterfeited currency notes and huge quantity of counterfeited currency notes having the denomination of Rs. 100 and Rs. 50 were recovered, the total amount of counterfeited currency Notes Rs. 25,400/- were recovered. Some other papers having the print of Rs. 100 and Rs. 50 were recovered. The petitioner and co-accused Vipin disclosed the name of their associate, who successfully escaped from the place of incident, is Teetu son of Lakhan Singh Thakur. The petitioner and co-accused Vipin confessed before the police that they were manufacturing the counterfeited currency notes and they were circulating through agent. The copy of the impugned order dated 22.12.2011, the grounds of detention and all other connected documents were supplied to the petitioner through Jail Superintendent, Aligarh by District Magistrate on 22.12.2011, the same were sent to the State Government on the same day, which was received by the State Government on 23.12.2011. The order of detention order dated 22.12.2011 was approved by the State Government on 28.12.2011 and all the documents received from District Magistrate, Aligarh were sent by the State Government to the Central Government as well as State Advisory Board on 28.12.2011, the order dated 28.12.2011 approving the detention order was communicated to the petitioner through district authority by radiogram and letter, both dated 28.12.2011.

3. Vide letter dated 11.1.2012, the State Advisory Board informed the State Government that the case of the petitioner will be taken up for hearing on 16.1.2012 and directed that petitioner be informed that if he desires to attend the hearing before the Advisory Board along with his next friend (non-advocate), he could do so and be allowed to take his next friend, if so requested. In the meantime, the petitioner sent his representation dated 10.1.2012 addressed to Chairman, Advisory Board Lucknow which was received in the office of District Magistrate, Aligarh through jail authority on 10.1.2012 on which the comments were called from S.S.P. Aligarh and Station Officer of the police station concerned, the Station Officer by letter dated 12.1.2012 submitted the comments to S.P. Aligarh and S.P. Aligarh sent the comments to the District Magistrate vide letter dated 13.1.2012, the representation was rejected by District Magistrate, Aligarh on 13.1.2012, on the same day the representation along with the comments was sent to State Government on 13.1.2012 through special messenger on the same day it was sent to Central Government, the representation of the petitioner sent by District Magistrate, Aligarh was received in the concerned section of State Government on 16.1.2012, the State

Government sent the representation and para-wise comments to State Advisory Board to Central Government vide separate letter dated 16.1.2012. The representation of the petitioner was examined by the State Government on 17.1.2012 by Under Secretary, it was examined by Special Secretary on 18.1.2012 and thereafter submitted to the Secretary who after examining the same, submitted to the higher authority for passing the final order. After due consideration, the petitioner's representation was finally rejected on 18.1.2012. It was communicated to the petitioner through District Authority by State Government radiogram dated 19.1.2012 but before hearing the petitioner his representation was received by State Advisory Board on 16.1.2012. The petitioner appeared before State Advisory Board on 16.1.2012, the Board, on that date heard the petitioner in person, considered his representation and given its report expressing therein its opinion that there was a sufficient cause for detention of the petitioner, this representation was received in the concerned section of the State Government through U.P. Advisory Board letter dated 30.1.2012 on 1.2.2012. On receipt of the report of the State Advisory Board, the State Government once again examined afresh the entire case of the petitioner along with the opinion of Advisory Board and took a decision to confirm the detention order and also for keeping the petitioner under detention for a period of 12 months, on 22.12.2011, it was issued by the State Government and the radiogram and letter both dated 6.2.2012, it was received in District Jail Aligarh on 7.2.2012, the same was communicated to the petitioner on 7.2.2012, the copy of the letter dated 6.2.2012 was also received in District Jail Aligarh on 10.2.2012, on the same day it was served upon the petitioner. The representation of the petitioner dated 10.1.2012 was rejected by the Central Government on 28.1.2012, it was received in the concerned Section of the Ministry of Home Affairs on 18.1.2012, the order dated 28.1.2012 was communicated through wireless message on 3.1.2012 to the Home Secretary Government of U.P., Superintendent of District Jail Aligarh, District Magistrate Aligarh and the detenu, the copy of the wireless message was sent on 31.1.2012 by Post to the detenu.

4. It is submitted by counsel for the petitioner that impugned order dated 22.12.2011 is illegal and the detention of the petitioner in district Jail Aligarh also illegal on the following grounds:

I. Because petitioner has been implicated in a false case by the police of police station Dadon, District Aligarh in case crime No. Nil of 2011 u/s 41/102 Cr. P. C. and 411 I. P. C. and recovery of Honda city Car No. U. P. 75 F-6823 shown.

II. Because just thereafter lodged another case in case crime No. 246 of 2011 under sections 420, 489-A, 489-B, 489-C, 489-D and 489-E, I. P. C. against the petitioner and two others showing the recovery of 100 rupees counterfeit note 49 in numbers from the hands of the petitioner with a printer, paper and ink from the aforementioned Honda City car.

III. Because neither the computer or laptop nor block of note are alleged to have

been recovered from either from possession of petitioner or others or from that very Honda City car.

IV. Because name of independent witnesses were not shown in the First Information Report/recovery memo by the police to certify the recovery.

V. Because recovery memo was not prepared on the alleged place of recovery.

VI. Because all the police authorities without gone through the matter in depth approved the proposal of the Station Officer, police station Dando in mechanical manner.

VII. Because respondent No. 3 has not complied the mandatory obligation prescribed under sub-section (4) of section 3 and as such after twelve days the detention of the petitioner became illegal.

VIII. Because respondent No. 3 made reference to the respondent No. 2 vide letter No. 167 (1) JA dated 31.1.2012 in regard the grounds on which order of detention has not been made along with representation of the petitioner.

IX. Because respondent No. 2 rejected the representation of the petitioner arbitrarily in a mechanical manner vide order dated 19.01.2012 without obtaining the report of the Advisory Board.

X. Because respondent No. 1 has also rejected the representation of the petitioner arbitrarily in a mechanical manner vide order dated 31.01.2012.

XI. Because after perusal of the orders dated 19.1.2012, 31.01.2012 and 6.02.2012, deemed that the respondent No. 2 failed to place the order of detention before Advisory Board within stipulated period i.e. three weeks prescribed u/s 10 of the Act without any explanation.

5. It is further submitted by learned counsel for the petitioner that the alleged act for which the FIR has been lodged in Case Crime No. 246 of 2011 under sections 420, 489-A, 489-B, 489-C, 489-D and 489-E, I.P.C. is not affecting public order, it is simply related to law and order. The detaining authority has not applied its mind independently but in a routine manner, the impugned order has been passed on the report submitted by sponsoring authority. It is alleged that the detention order dated 22.12.2011 was approved by the State Government on 28.12.2011 but the order of approval dated 28.12.2011 was never communicated to the petitioner nor any material evidence showing its communication has been put up on record, it violates the provisions of section 3(4) of NSA, it makes the detention of the petitioner illegal.

6. There was undue delay in deciding the representation of the petitioner by the State Government as well as Central Government and no proper explanation has been given for keeping the representation without taking any action timely. The representation of the petitioner was sent to State Advisory Board on 16.1.2012, on that date, the petitioner had also appeared before Advisory Board and the State Advisory Board considered the case of the petitioner without having his

representation, therefore, the opinion submitted by State Advisory board is not proper, it has been submitted without considering the representation filed by the petitioner, the State Government has confirmed the order of detention after considering the opinion of the Advisory board which was not based on complete record. In such circumstances, the continuation of detention of the petitioner has become illegal, therefore, both may be released from jail forthwith.

7. In reply of the above contention, it is submitted by learned A.G.A. that the petitioner was arrested on 9.10.2011 and from the possession of the petitioner and co-accused Vipin, the counterfeited currency notes were recovered, from their Honda City car in huge amount of counterfeited currency notes, a printer and other material used in counterfeited currency notes were recovered, the petitioner was involved in manufacturing and circulating the counterfeited currency notes, the act done by petitioner is an offence which adversely affecting the economy of country, it is an offence against nation, it is affecting public order also. The detaining authority did not commit any error in passing the impugned order on this ground.

8. The order of detention dated 22.12.2011 was approved by the State Government on 28.12.2011, the order dated 28.12.2011 was properly communicated to the petitioner on 29.12.2011 as stated by Sri Rajesh Kumar Singh, Deputy Jailor, district jail Aligarh in paragraph 5 of the counter affidavit, mentioning therein that the radiogram dated 28.12.2011 with regard to approval of the detention order dated 22.12.2012 was received in district jail Aligarh on 29.12.2011, the same was served upon the petitioner on the same day and a copy of the approval order dated 28.12.2011 was received in the district jail on 6.1.2012, the same was served upon the petitioner on the same day. Therefore, the submission made by counsel for the petitioner that the order of approval dated 28.12.2011 was not communicated to the petitioner is not correct and it is baseless and there is no violation of provision of section 3(4) of the NSA.

9. The representation of the petitioner dated 10.1.2012 was received in the office of District Magistrate, Aligarh who rejected the same on the same day, it was sent to the State Government along with para-wise comments on 16.1.2012, thereafter the case of the petitioner was considered at different levels in the State Government on 16, 17, 18 January, 2012, thereafter after due consideration it was rejected on 18.1.2012, there was no delay in deciding the representation of the petitioner, it has been averred in paragraph 3 of the counter affidavit filed by Sri Prem Shanker, Under Secretary, Home (Confidential) Department, U.P. Civil Secretariat, Lucknow.

10. The representation of the petitioner was duly sent by the State to the Central Government along with all connected documents vide letter dated 13.1.2012, the same was received in concerned Section of the Ministry of Home Affairs on 18.1.2012, thereafter the representation and report submitted u/s 3(5) of NSA were processed on 19.1.2012, 20.1.2012 and 23.1.2012. On 21.1.2012 and 22.1.2012 the office was closed on account of holidays (Saturday and Sunday),

after processing the representation etc. it was put up to the Director on 24.1.2012. The Ministry of Home Affairs deals with a large number of reports submitted u/s 3(5) of NSA, representations and court cases from various High Courts along with other subjects, such as processing of bills from C.G.S.C. etc. from all over India. Due to this sheer volume and critical nature of the work, every report u/s 3(5) of NSA and representation requires detailed examination. During the period of 16.1.2012 to 23.1.2012, the NSA Section of the Ministry of Home Affairs had received around 59 cases which largely consisted of reports u/s 3(5) of NSA and representations. The 26.1.2012 was the Republic Day celebration for which there were rehearsals, ultimately, the representation of the petitioner was rejected on 28.1.2012, there was no undue delay in deciding the representation, the delay in deciding the representation is properly explained.

11. The representation of the petitioner was duly considered by U.P. Advisory Board. It has been averred in paragraph 3 of the counter affidavit filed by Sri Prem Shanker, Under Secretary, it has not been controverted in the rejoinder affidavit filed by the petitioner.

12. Considering the facts, circumstances of the case, submission made by learned counsel for the petitioner and learned A.G.A. and Sri Nitin Gupta, learned counsel appearing on behalf of Union of India and from the perusal of the record it appears that in the present case, the order of detention under NSA passed on 22.12.2011, the main ground of the detention is that from the possession of the petitioner, counterfeited currency notes, printer etc. used in manufacturing the counterfeited currency notes have been recovered is to run a parallel system by manufacturing the counterfeited currency notes and circulating the same through the agents, it is adversely affecting national currency and its circulation. The detaining authority passed the impugned order after considering sufficient material available before him. The impugned order is not suffering from any illegality or irregularity, the impugned order has been passed on 22.12.2011, but the representation has been sent by the petitioner on 10.1.2012, the same was received by the State Government on 16.1.2012, on the same day it was sent to State Advisory Board, the State Advisory Board has considered the representation of the petitioner also and submitted the report expressing the opinion that there was sufficient cause of detention of the petitioner. It has been further averred by the deponent-Prem Shanker, Under Secretary Home Department, U.P. in the counter affidavit which has not been controverted by the petitioner in his rejoinder affidavit, therefore, the State Government has not committed any error in confirming the detention order after considering the above mentioned opinion of State Advisory Board.

13. The representation dated 10.1.2012 has been rejected by the District Magistrate, Aligarh on the same day and it was rejected by the State Government on 18.1.2012 there was no undue delay in deciding the representation by the State Government, the representation of the petitioner was received by the Central Government on 18.1.2012, it has been rejected on

28.1.2012, the period taken in deciding the representation has been properly explained by the Central Government, there was no undue delay in deciding the representation of the petitioner. In such circumstances, neither the detention order is illegal nor the continuation of the petitioner in detention is illegal. The prayer for quashing the impugned order dated 22.12.2011 passed by District Magistrate, Aligarh and the prayer to release the petitioner at liberty forthwith is refused and there is no reason to impose the cost upon any of the parties. Accordingly, this petition is dismissed.