

(2005) 02 AHC CK 0145

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition Nos. 55702, 55796, 55708 and 55712 of 2004

Gajendra Singh ; Sant Ram; Satish

APPELLANT

Vs

Adhikshak Janpad Karagar, Janpad Ghaziabad & Ors.

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2005) 02 AHC CK 0145

Hon'ble Judges : S.Rafat Alam, J and Vikram Nath, J

Final Decision : Allowed

Judgement

1. In all these four Writ Petitions, the petitioners have questioned the validity of the orders of the District Magistrate, Ghaziabad dated 2592004 in Writ Petition No. 55796 of 2004 and dated 3092004 in the other three Writ Petitions, whereby they have been detained under the provisions of the National Security Act (hereinafter referred to as the Act).

2. Counter and rejoinder affidavits have been exchanged between the parties and are on record. Since the accusations and the pleadings in all the four Writ Petitions are similar to each other and also as requested by the learned Counsel for the parties, they were heard together and are being disposed of by this common judgment.

3. Heard learned Counsel for the Writ Petitioners and the learned Counsel for the respondents.

4. It appears that the Writ Petitioners are detained on account of their involvement in Case Crime No. 595 of 2004 under Sections 147/148/149/307/302 IPC and Section 27 of the Arms Act Police Station Sihani Gate in the District of Ghaziabad.

5. The ground of detention is enclosed as Annexure 2 to the Writ Petition. A perusal thereof shows that the allegations against the petitioners briefly stated

are that they alongwith their associates made indiscriminate firing, as a result of which, one Sanjay died at the place of occurrence and Sunil and Rajendra sustained serious gun shot injury. It has further been stated that the alleged offence was committed at the bus stand at 8 p.m. on account of which an atmosphere of panic and terror was created in the locality and the people started running helter skelter of their safety as a result of which the public order as disturbed. On the request of the Station Officer, Police Station Sihani Gate, District Ghaziabad vide letter dated 28/9/2004, the Senior Superintendent of Police, Ghaziabad, vide letter dated 29/9/2004 sent the proposal to the District Magistrate to detain the petitioners under the provisions of the Act. The District Magistrate thereafter having satisfied with the material placed before him passed the impugned order on 30/9/2004. In Writ Petition No. 55796 of 2004, the Senior Superintendent of Police sent its report on 24/9/2004 based on the request of Station Officer dated 18/9/2004 and the District Magistrate passed the order on 25/9/2004. The State Government thereafter approved their detention for a period of one year from the date of the order of the District Magistrate.

6. Learned Counsel for the Writ Petitioners inter alia contended that the impugned order of detention cannot sustain of the simple reason that the detaining authority without recording his satisfaction about the imminent possibility of the petitioners/detenus being released on bail ordered the detention of the petitioners knowing fully well that they are already detained in judicial custody in connection with the aforesaid crime. The contention, in short, is that the order of detention can be passed against a person, already in custody, only when the detaining authority is satisfied on the material placed before him that there is every possibility of that person being released on bail in near future. Reliance is placed on the judgment of the Hon''ble Apex Court in the case of Union of India v. Paul Manickam & Anr. reported in (2003) 8 SCC 342. It is also submitted that the bail applications moved by all the petitioners were already rejected by the Chief Judicial Magistrate and by the District and Sessions Judge concerned much before passing of the impugned order of detention and on the day when the impugned order of detention was passed, no bail application was pending before any Court and, therefore, there was no material before the detaining authority to suggest that the petitioners were likely to be released on bail. It is submitted that in the absence of satisfaction of the District Magistrate regarding possibility of the detenus being released on bail in the near future, the order of detention is vitiated. It is further argued that even this Court held that the order of preventive detention vitiates where the order of preventive detention is made against a person, already in custody, without recording subjective satisfaction about the imminent possibility of being enlarged on bail. A photo copy of the certified copy of the order/judgment dated 13/9/2004 passed in Writ Petition No. 18020 of 2004, Kishan Kumar v. State of U.P. & Ors., and other connected Writ Petitions was placed before us for perusal.

7. On the other hand, Sri Arvind Tripathi, learned Additional Government Advocate vehemently opposed the Writ Petitions and drew our attention to the

report of the sponsoring authority/Senior Superintendent of Police dated 2992004, contained in Annexure3 to the Writ Petition, and submitted that the sponsoring authority, in its report had mentioned that there was every possibility of the detenus being released on bail and it was this material upon which, the District Magistrate having been satisfied, passed the order of detention. It is submitted that there was sufficient material on record to infer that the petitioners were likely to be enlarged on bail and the District Magistrate having been subjectively satisfied on the material available in record passed the impugned order of detention.

8. The question, as to whether the Detaining Authority, while detaining a person, who is already in custody under the provisions of preventive detention, is required to record his satisfaction about the imminent possibility of being released on bail, is no more *res integra* and has been concluded by a series of judgments of the Hon''ble Apex Court. In the case of *Dharmendra Suganchand Chelawat v. Union of India & Ors.* reported in 1990(1) JIC 396 (SC) : (1990) 1 SCC 746, the Hon''ble Supreme Court, while considering its earlier judgment observed as under:

? The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression ? compelling reasons? in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities?.

9. This view was agains followed in the case of *Smt. Qamrunnisa v. Union of India & Ors.* reported in 1991 (1) SCC 128, and in *Union of India v. Paul Manickam & Anr.* reported in (2003) 8 SCC 342. Therefore, it is well settled legal position that where a person is in custody, an order of preventive delention can be passed, but it is necessary for the detaining authoority to be a ware of the fact that such person is already in custody and yet he was subjectively satisfied that his order of detention becomes necessary, as there is every possibility of the detenu being enlarged on bail.

10. In the case, in hand, it is not in dispute that on the date when the order of detention was passed, much prior to that, bail applications of the detenus were rejected by the respective Courts. It is also apparent from a perusal of the grounds of detention that the detaining authority has no where recorded his satisfaction about the imminent possibility of being released on bail, which

vitiates the impugned order.

11. The contention of the learned Additional Government Advocate that there was material on record, as the Senior Superintendent of Police, in its report, has mentioned that there is imminent possibility of the petitioners being released on bail, has no force and cannot be accepted for the reasons that such satisfaction should have been of the detaining authority and it should have been incorporated in the order of detention or in the grounds of detention, and cannot be supplemented by giving counteraffidavit.

12. In the case of Alijan Mian v. District Magistrate, Dhanbad & Ors. reported in AIR 1983 SC 1130, and in N. Meera Rani v. State of Tamilnadu reported in AIR 1989 SC 2027, the Hon"ble Supreme Court has observed that the awareness of the detaining authority about the custody of the detenu and also the satisfaction regarding possibility of the detenu being enlarged on bail is necessary for passing the order of detention. Therefore, in view of the exposition of law and also in view of the fact that the detaining authority failed to record such satisfaction, the detention of the petitioners under the provisions of the Act is vitiated.

13. No doubt the alleged offence committed by the petitioners are of serious nature has been committed at a public place, but when it comes to civil liberty of a citizen, which is guaranteed and protected under Article 21, the detaining authority while passing the order of preventive detention has to meticulously accord with the procedure established by the law and the laws of preventive detention are construed strictly and any breach of it, vitiates the order of detention. The Hon"ble Supreme Court in its recent judgment in the case of Union of India v. Chhaya Ghoshal, 2005 (51) ACC 282, observed that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is an obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by the law and, therefore, the laws of preventive detention are strictly construed and a meticulous compliance with the procedural safeguard, however technical, is mandatory.

14. Since these petitions deserve to be allowed on the point discussed above, we need not to address on the other contentions raised in the Writ Petitions.

15. In the result, all the four Writ Petitions succeed and are hereby allowed. The respondents are directed to set the Writ Petitioners at liberty forthwith provided they are not required to be detained in any other case. However, there shall be no order as to costs.

Pettion allowed.