

(2000) 08 AHC CK 0099
In the Allahabad High Court
Case No : Writ Petition No. 3676 (M/B) of 2000

Gyan Chandra Tiwari

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 394
Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 3(1)

Citation : (2000) 4 AWC 2672

Hon'ble Judges : Virendra Saran, J; R.D. Mathur, J

Bench : Division Bench

Advocate : Rakesh Pathak, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.D. Mathur, J.—An order of detention under sub-section (2) of Section 3 of the National Security Act (hereinafter referred to as Act) was passed against the petitioner on July 2, 2000 by the District Magistrate, Gonda. Before order could be executed, the present writ petition was filed on July 19, 2000, praying that a writ in the nature of certiorari be issued to quash the impugned order dated July 2, 2000 and a writ in the nature of mandamus be issued, directing the respondents not to arrest the petitioner in pursuance of the aforesaid order.

2. A copy of the grounds of detention has been filed along with writ petition. The ground of detention mentions about one criminal case in which the petitioner was involved. It is alleged that on May 20, 2000, the petitioner along with his companions went to the shop of Ready-made Garments of Dinesh Chandra Gupta in Mohalla Gola Bazar, Kasba Nawabganj and took 9 sets of cloths from there. When Dinesh Chandra Gupta demanded price, the petitioner hurled abuse and took out country made pistol, looted the cash kept in the box and beat Dinesh Kumar Gupta. He also threatened the witnesses of dire consequences showing

them country made pistol. That while making good their escape, the companions of the petitioner snatched Rs. 1,200 as Goonda tax from Sushil Kumar Gupta. The case was registered at Crime No. 88 of 2000 u/s 394. I.P.C. and Section 3 (1) of U. P. Gangsters Act and Anti Social Prevention Act at Police Station, Nawabganj, district Gonda.

3. It may be mentioned here that the writ petition was filed on July 19, 2000, even before the detention order had been executed or grounds of detention were served upon the petitioner. Learned counsel for the petitioner has referred to the Judgments of Additional Secretary to the Government of India and others v. Smt. Alka Subhash Gadia and another 1992 SCC 301 and N.K. Bapna Vs. Union of India (UOI) and Others, . In the case of Smt. Alka Subhash Gadia (supra) the matter has exhaustively been dealt with and Hon''ble Supreme Court has held that ;

"It is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number. viz., where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the Courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."

4. On the strength of the case of Smt. Alka Subhash Gadia, learned counsel for the petitioner has contended that it is now well-settled that even in the case of preventive detention, it is not necessary for the proposed detenu to wait till detention order is served upon him before challenging the detention order. He has further contended that from the grounds of detention, it is clear that the District Magistrate has not applied his mind and the detention order has been passed for a wrong purpose and on irrelevant grounds. That from tenor of the grounds, it is clear that the detention order is being passed simply because the petitioner has been successful In obtaining stay order of his arrest from this Court in solitary case in which he is said to be involved.

5. Learned Additional Government Advocate has contended that the no interference at pre-detention stage is permissible except on limited grounds enumerated in Smt. Alka Subhash Gadia's case (supra). Reliance has been placed on the case of Union of India and Others Vs. Parasmal Rampuria, and in the case of Administration of the National Capital of Delhi, Raj Niwas. Delhi v.

Prem Singh. 1996 SCC 54.

6. The decision of Smt. Alka Subhash Gadia's case has been subsequently followed in N. K. Napna's case (supra). Thus, the power under Article 226 of the Constitution can be exercised at the pre-execution stage on very limited grounds enumerated by the Apex Court and not on all the grounds which are available after the detention order has been served and the person has been taken into custody.

7. It is not the case of the petitioner that the detention order has not been passed under the National Security Act or that the District Magistrate who passed the order of detention had no authority to do so or that the impugned order had not been passed against him and it is sought to be executed against a wrong person. It is also not the case of the petitioner that the impugned order is passed on vague, extraneous and irrelevant grounds. The only ground urged is that the detention order has been passed for a wrong purpose.

8. In the case of Smt. Alka Subhash Gadia. (supra), the Hon"ble Supreme Court has also held that this still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie, the limited grounds on which they can be successfully challenged, the Courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, as stated earlier, the Court can and does hear such petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case.

9. No doubt, in the instant case, we have doubts in our minds that the petitioner's detention under National Security Act has been for the reason that he was able to secure a stay order from this Court and perhaps the provisions of the Act have been Invoked as a devise of camouflage to defeat the order of this Court. However, we leave it open to the petitioner to agitate all the points after submitting to the detention order. In the result, the writ petition is dismissed.