

(2004) 08 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (Criminal) 222 of 2004

Hans Raj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Delhi Police Act, 1978 — Section 140
National Security Act, 1980 — Section 3, 3(2), 3(4)
Penal Code, 1860 (IPC) — Section 307, 323, 452, 458, 502

Citation : (2004) 08 DEL CK 0026

Hon'ble Judges : D.K. Jain, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Herjinder Singh, for the Appellant; Barkha Babbar and Mukta Gupta, for respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner Hans Raj prays for issuance of a writ of habeas corpus, challenging the propriety and validity of the order of detention dated 15 December 2003, passed by the Commissioner of Police, Delhi, hereinafter referred to as the "detaining authority", under sub-section (2) of Section 3 of the National Security Act, 1980 (for short " the NSA"), on being satisfied that petitioner"s detention was necessary with a view to prevented from acting in any manner prejudicial to the maintenance of public order.

2. The petitioner was detained on 17 December 2003 when the impugned order along with the grounds of detention were served on him.

3. The relevant facts as they emerge from the grounds of detention are:

3. 1. That the petitioner, aged abut 38 years, stated to be a dangerous, desperate and man of bad character of the area of police station Pandav Nagar,

Delhi, started indulging in criminal activities at the age of about 17 years and was involved in 29 criminal cases up to the year 2003. The cases against him included voluntarily causing hurt, criminal intimidation, house trespass, theft, assault on woman with the intent to outrage her modesty, obstructing public servants from discharging their official duties, mischief, attempt to culpable homicide, wrongful restraint, criminal conspiracy and attempt to murder. Preventive actions under the NSA had been taken against him twice. The 29 cases, in which he is alleged to have involved himself, are enlisted in the grounds of detention.

3. 2. Keeping in view the criminal activities from the year 1982 to 1992, the then Commissioner of Police passed an order of detention against him on 3 October 1992 under the NSA. However, the said order was revoked on the basis of the opinion rendered by the Advisory Board.

3. 3. It is alleged that on coming out from jail, the petitioner did not mend himself and again started indulging in similar activities. To prevent him from continuing with such activities, another order of detention was passed against him on 17 April 1993, which was approved by the Lt. Governor on 26 April 1993. However, the petitioner absconded and filed a criminal writ petition in this Court challenging the said order. The writ petition was, however, dismissed and the order of detention was exacted on 12 December 1994. But the said order was again revoked on the basis of the opinion of the Advisory Board. The status of the 29 criminal cases, referred to in the grounds of detention, is that he has been convicted in two cases; acquitted in 20 cases and the remaining cases are under trial. It is alleged that due to his terror and fear, witnesses are extremely afraid to depose against him in the Court of law, which is evident from his acquittal in a case in which even the victim had turned hostile. Similarly, in another case the complainant/victim did not attend the Court and left his residence for an unknown place and the case thus resulted in his acquittal. Though in the grounds of detention reference is made to 29 cases, showing his past criminal record but only four cases registered against him under Sections 458/323/506/307/452 IPC have been specifically relied upon in the grounds of detention.

3. 4. On the basis of the material placed before him, briefly referred to above, the detaining authority came to the conclusion that such criminal activities clearly show that the petitioner is a desperate and dangerous criminal, whose activities are pre judicial to the maintenance of public order; his acts of violence against public and property show his complete contempt for law of the land; since he is usually found in possession of fire arms, prosecution witnesses are extremely terrified to depose against him in Court and his criminal activities have disturbed the normalcy of the society. Thus, keeping in view his criminal record, the detaining authority felt satisfied that there was every apprehension/imminent possibility that the petitioner would again indulge in similar type of criminal activities, which will adversely affect the maintenance of public order. Therefore,

to prevent him from indulging in similar nefarious activities, which are stated to be prejudicial to the maintenance of public order, the impugned order has been passed against him. Hence the present writ petition.

4. The petition is resisted by the respondents and affidavits in opposition have been filed on behalf of all the respondents, which include the Union of India, through Secretary, Ministry of Home Affairs, Commissioner of Police, Delhi and the Lt. Governor, Delhi, as respondents No.1,2 and 3 respectively.

5. We have heard Mr. Herjinder Singh, learned counsel for the petitioner and Ms. Mukta Gupta, learned counsel for the detaining authority.

6. Mr. Herjinder Singh, learned counsel for the petitioner, has assailed the order of detention as illegal and voidable on various grounds. Firstly, it is submitted that the sponsoring authority has suppressed various material documents from the detaining authority, which has vitiated the satisfaction recorded by the detaining authority. In the alternative, it is urged that assuming that these documents were placed before the detaining authority, then, being relied upon material, these should have been supplied to the petitioner to pass the grounds of detention. The documents/material, alleged to have been suppressed are as under:

""a) Writ petition being Crl.W. No.867/2003 against the false implication in case FIR Nos. 232/2003 and 265/2003 which are item No.28 and 29, the orders passed by this Hon"ble Court and report filed by the Police.

b) The representation dated 15.7.2003 made to the Hon"ble Lt. Governor in the FIR Nos.232 and 265 of 2003.

c) In the bail application at page 196 of the documents it has been mentioned that he and his father had filed writ petitions against the police of PS Trilok Puri and they had a grudge against him.

d) A notice u/s 80 of CPC dated 9.4.1995 was served on the SHO PS Trilok Puri, Administrator, Secretary and Collector, NCT of Delhi.

e) The bail application dated 14.8.2003 before the Court of Shri M/.K. Nagpal, MM, Shahadara, Delhi.

f) Evidence of the cases in which witnesses have turned hostile not been placed.

g) Notice u/s 140 of the DP Act by the father of petitioner.

h) Suit filed by the brother of the petitioner, Civil Suit No.85/02.

i) Complaint dt. 27.5.02 to Commissioner of Police by the brother of the petitioner.""

The submission is that the said documents were very relevant and could have influenced the mind of the detaining authority and, Therefore, ought to have been placed before the detaining authority. It is asserted that failure to do so

vitiates the order of detention. In support of the proposition that failure to supply copies of the material relied upon in the grounds of detention rendered the detention illegal, reliance is placed on the decisions of the Supreme Court in *Yunnam Mangibabu Singh Vs. State of Manipur and Others*, and *Khudiram Das Vs. The State of West Bengal and Ors.* 1975 SCC 435.

7. In the reply affidavit filed on behalf of the respondents, the allegation of suppression of any material document has been denied. It is stated that the criminal writ petition was within the knowledge of the detaining authority at the time of passing the detention order; the representation dated 15 July 2003, made to the Lt. Governor, formed part of the said criminal writ petition and was thus, before the detaining authority; Civil Suit No.85/2002, notices u/s 80 CPC dated 9 April 1995 and Section 140 of the Delhi Police Act had nothing to do with the relied upon cases and were thus, not placed before the detaining authority and the bail applications were duly placed before the detaining authority. The stand of the respondents is that all the relevant material which was germane to the passing of the impugned order was placed before the detaining authority, including some of the documents, noted above. Therefore, the question which arises for consideration is whether the non-supply of some documents, admittedly placed before the detaining authority but not supplied to the petitioner has resulted in vitiating the detention order ?

8. It is a constitutional mandate that after the detention of a person, the detaining authority must communicate to the detent the grounds on which the order of detention has been made and afford him an earliest opportunity to make a representation against the detention. For making the representation, it is imperative that the detent is supplied with not only the grounds of detention drawn up but all the material, which forms the basis of the subjective satisfaction of the detaining authority. Obviously, the intention behind supply of documents to the detent is to apprise him of the material on which the grounds of detention were based, to enable him to exercise his constitutional right of making an effective and purposeful representation against his detention. There is no gain saying that being a constitutional mandate, it has to be scrupulously observed.

9. It is well settled that non-supply of relied upon documents vitiates the detention irrespective of the fact whether any prejudice is shown to have been caused to the detent or not. But it is not so in the case of referred to documents. In such a case the detention would get vitiated only if the detent shows that prejudice has been caused to him by non-supply of such documents.

10. This fine distinction in the above-referred two situations has been highlighted by their Lordships of the Supreme Court in *Powanammal Vs. State of Tamil Nadu and Another*, in the following words:

""This Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas

non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detente need not show that any prejudice is caused to him. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded an opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case the d?tente"s complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation.""

11. We are of the view that in the present case the question of prejudice or otherwise is irrelevant, in as much from a bare reading of the grounds of detention it is clear that the documents/material, which are alleged to have been suppressed from the detaining authority, have neither been relied upon nor even referred to in the grounds of detention, though as per the counter affidavit, some of these were placed before the detaining authority. The said stand of the respondents has not been controverted by the petitioner in the rejoinder affidavit. The detaining authority having found the said material as irrelevant for the purpose of the impugned order and based its subjective satisfaction on the other material on record, it is not for this Court to substitute its opinion for that of the detaining authority to hold that the detaining authority would have been better advised to take into consideration some other material. We have, Therefore, no hesitation in rejecting the contention of learned counsel for the petitioner that some material documents had been suppressed from the detaining authority or that the non-supply of some documents, though placed before the detaining authority, but neither relied upon nor referred to, has in any way affected the right of the petitioner to make an effective representation, thus violating the mandate of Article 22(5) of the Constitution.

12. It was then submitted by learned counsel for the petitioner that even if the four instances relied upon by the detaining authority are taken on their face value, still these cannot be construed as activities prejudicial to the maintenance of public order within the meaning of sub-section (2) of Section 3 of the NSA. In support, reliance is placed on a decision of the Supreme Court in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, .

13. We do not find much substance in the contention of learned counsel for the petitioner. The distinction between the two concepts of ""public order"" and ""law and order"" has been lucidly explained by the Apex Court in *Ashok Kumar Vs. Delhi Administration and Others*, . Inter alia, observing that the true distinction between the areas of ""public order"" and ""law and order"", being fine and sometimes overlapping, does not lie in the nature or quality of the act but in the degree and extent of its reach upon society, their Lordships said that the act by itself is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it ""prejudicial to the maintenance of public order"".

If the contravention in its effect is confined only to a few individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of "law and order" only. It is the length, magnitude and intensity of the terror wave unleashed by a particular act or violence creating disorder that distinguishes it as an act affecting "public order" from that concerning "law and order". On the facts of that case the Court held that whenever there is an armed hold up by gangsters in a residential area of the city and persons are deprived of their belongings at the point of knife or revolver they become victims of organized crime and such acts when enumerated in the grounds of detention, clearly show that the activities of a detenu cover a wide field falling within the ambit of the concept of "public order".

14. To the same effect are the observations of the Apex Court in *Smt. Victoria Fernandes Vs. Lalmal Sawma and others*, , wherein, relying on its earlier decisions, including *Ashok Kumar's case (supra)*, it was reiterated that while the expression "law and order" is wider in scope, in as much as contravention of law always affects order, "public order" has a narrower ambit and public order would be affected only by such contravention which affects the community and public at large.

15. The scope of expression "acting in any manner prejudicial to the maintenance of public order" as appearing in Sub-Section 2 of Section 3 of the NSA also came up for consideration of the Supreme Court in *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others*, ; *Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others*, and *Hasan Khan Ibne Haider Khan Vs. R. H. Mendnoca and Others*, . Their Lordships held that the fallout, the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with the person concerned or to prevent his subversive activities affecting the community at large or a large section of the society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activities amounts only to a breach of "law and order" or it amounts to a breach of "public order". In *Amnulla Khan* case (supra), it has been held that the activities involving extortion, giving threat to public and assaulting businessmen near their place of work were sufficient to affect the even tempo of life of the society and in turn amounting to the disturbance of the "public order" and not mere disturbance of "law and order".

16. Having examined the grounds of detention on the touchstone of the broad principles as emerging from the afore-noted decisions, we are of the considered view that the activities relied upon by the detaining authority to come to the aforementioned conclusion cannot be said to be the activities involving mere disturbance of law and order. The criminal activities relied upon in the grounds of detention pertain to criminal intimidation, house trespass etc., which, per se may involve an individual, but have the potentiality to disturb the even tempo of the

life of the community. For instance, FIR No.396/01 was registered against the petitioner on the basis of a complaint by one Smt. Jaya Banerjee Anand, when the petitioner along with a person claiming to be the owner of the house in the possession of said Smt. Anand, trespassed into the house in order to have it vacated on the strength of his muscle power. Similar is the position in FIR 353/02 which was registered on the basis of a complaint lodged by one Sandeep Sagwan, when the petitioner is alleged to have assaulted him for entering the area, which he claimed to be under his control and jurisdiction. We are of the view that the instances of the petitioner's activities, enumerated in the grounds of detention, show that his activities cover a wide field and fall within the contours of the concept of public order. We are convinced that petitioner's activities were directed against the public at large, having the effect of disturbing the even temp of life of the community, thus, breaching the public order. In our opinion, Therefore, the detaining authority was justified in law in passing the impugned order of detention against him.

17. It was also contended by learned counsel for the petitioner that the impugned order suffers from the vice of non-application of mind inasmuch as though on 22 December 2003, the petitioner had made a representation to the detaining authority but without any request by him in that behalf the same was referred to the Lt. Governor. It is asserted that by referring the said representation to the Lt. Governor, the respondents have frustrated petitioner's right to make an independent representation to the Lt. Governor.

18. In answer to the said plea of the petitioner, it is stated by the respondents in their affidavit that though the representation by the father of the petitioner was addressed to the detaining authority but since the Lt. Governor of Delhi is the approving authority in the detention matters, every representation submitted to the detaining authority is placed before the Lt. Governor for consideration. The representation is considered independently by the Lt. Governor as well as by the detaining authority In nut-shell the stand of the respondents is that no prejudice is caused to the petitioner merely because his representation has been considered by two authorities.

19. We are of the opinion that this contention of learned counsel for the petitioner has no merit as well. There is no gain saying that the constitutional right to make a representation under Clause (5) of Article 22 of the Constitution by necessary implication guarantees the constitutional right to a proper consideration of the representation. Being a cherished right of a citizen, the authority to whom the representation is made is under a legal obligation to consider the representation, uninfluenced the views of any other authority. It is a valuable constitutional right and cannot be taken as a mere formality. It is not petitioner's case that his representation has not been considered by the detaining authority to whom it was submitted. His only grievance is that in the absence of any request from his end, by forwarding his representation to the Lt. Governor, the respondents have defeated his right to make an independent

representation to the said authority. Although the observations of the constitution Bench of the Supreme Court in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, tend to support the stand of the respondents that being the confirming authority, u/s 3(4) of the Act, the representation was forwarded to the Lt. Governor for his consideration but having regard to the fact that in the present case the representation has been considered by the detaining authority also, we deem it unnecessary to dwell deeper into the issue whether the representation could be placed before the Lt. Governor. We feel that as long as the representation is independently considered by the detaining authority, no prejudice is caused to the detenu by the fact that it has been considered by the Lt. Governor also. In our view, petitioner's right to make a representation to the confirming authority is not frustrated or diminished merely because his earlier representation has already been considered by the same authority, as is sought to be pleaded. His right to make representation to the Lt. Governor still survived. It is pertinent to note here that in January 2004, the petitioner in fact made a representation to the Lt. Governor. In our opinion, Therefore, the detention order cannot be invalidated openly on the ground that the representation has been considered by two authorities.

20. Having considered the matter in the light of the circumstances, noted above, we are of the opinion that the apprehension entertained by the detaining authority, to the effect that the activities of the petitioner are prejudicial to the maintenance of public order, is genuine and cannot be faulted on the grounds urged before us. The impugned order of detention does not suffer from any illegality, warranting our interference. The writ petition, being bereft of any merit, is dismissed accordingly, but with no order as to costs.