

(2015) 04 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ (Habeas Corpus) Petition No. 58/2015

Imran

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 110, 122, 151
Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 3(1)

Citation : (2015) 04 RAJ CK 0019

Hon'ble Judges : Prakash Gupta, J.;Ajit Singh, J.

Bench : Division Bench

Advocate : Mithlesh Kumar and Neeraj Joshi, for the Appellant; Brahmanand Sandu, A.A.G cum Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. By this petition, filed under Article 226 of the Constitution, petitioner, Imran alias Katya has challenged his detention under Section 3(1) of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (in short "the Act") by respondent No. 2 - Executive Magistrate, Jaipur.

2. The facts in brief are these. The Executive Magistrate, Jaipur, by exercising powers under Section 3(1) of the Act, passed an order dated 25.8.2014 for the detention of petitioner in Central Jail, Jaipur. The case of petitioner was then referred to the Advisory Board, which reported that, in its opinion there was sufficient cause for his detention. The State Government thereupon confirmed the detention order of petitioner for a period of twelve months from the date of his detention. Aggrieved, the petitioner has filed the present petition praying for quashing of the order of detention.

3. The learned counsel for petitioner mainly submitted that the detention of petitioner is wholly illegal as the detention order was not at all necessitated, which would also be apparent from the grounds of detention served. The learned

counsel relied upon the decision of Supreme Court rendered in Gulab Mehra Vs. State of U.P. and Others, in support of his submission.

4. The learned Addl. Advocate General cum Govt. Advocate, on the other hand, has justified the detention order of petitioner. According to his submission, the grounds of detention clearly reveal that the petitioner is an habitual offender and is involved in criminal activities since 2002 and, therefore, looking to his criminal acts, the order of detention under challenge had become necessary.

5. It is now well settled that there must be a live link between the grounds of criminal activities alleged by the detaining authority and the purpose of detention (see Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, and this credible chain is snapped if there is too long and unexplained an interval between the offending acts and the order of detention (see Lakshman Khatik Vs. The State of West Bengal, . But the Supreme Court has also observed that no mechanical test by counting the months of the interval is sound and it all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation.

6. The Supreme Court also in large number of cases has held that there is a clear distinction between "law and order" and "public order" and pointed the difference between the two in the following words as summarised in Smt. Victoria Fernandes Vs. Lalmal Sawma and others, :

"The distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a 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 eruption of disorder that helps distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is : Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on its facts. (See : Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; Arun Ghosh Vs. State of West Bengal, ; Ram Ranjan Chatterjee Vs. The State of West Bengal, ; Ashok Kumar Vs. Delhi Administration and Others, ." 7. In view of the above legal position, we shall now examine whether the detention order of petitioner passed under the Act was at all necessary and justified.

8. The grounds of detention brought on record against the petitioner in the form of Schedule, enumerates the following offending acts:

9. On examining the above quoted Schedule, it becomes clear that grounds from

serial No. 1 to serial No. 22 relate to acts alleged to have been committed by the petitioner between the years 2002 and 2012, and they are mostly of robbery and theft. These acts are may be offences under the Indian Penal Code, but cannot be held to be one which unleashed a terror wave so as to affect the even tempo of life in the locality. We are also of the view that said acts which were allegedly committed as back as in the years between 2002 and 2012, have no proximity to the impugned order of detention passed in the year 2014 and, therefore, cannot constitute the basis of detention of the petitioner for maintenance of public order. Likewise, grounds at serial No. 23 and serial No. 24 are also with regard to offences relating to cheating and robbery. These cases are of the years 2013 and 2014. None of these acts can be said to have taken place either in a public place or in the presence of public. Thus, even these acts also cannot be said to have affected the even tempo of life of any locality and have no nexus with the public order. Grounds from serial No. 25 to serial No. 29, but for ground at serial No. 27, relate to preventive proceedings initiated under Sections 110, 122 and 151 of the Code of Criminal Procedure, and they are also of the years between 2008 and 2013. Ground at serial No. 27 pertains to Section 3, 2(5) of the Rajasthan Gunda Control Act, 1975, and is with regard to an act committed in the month of March 2012. We are of the view that these acts and conduct of petitioner are nothing but display of "gundatism" by him and cannot be held to be one which unleashed a terror wave so as to affect the even tempo of life in the locality. They also have no proximity to the impugned order of detention passed in the year 2014.

10. Considering the factual position in the present case, and particularly the grounds of detention, we are of the view that there was no immediate necessity for detaining the petitioner under the Act in the interest of maintenance of public order. The acts alleged to have been committed by the petitioner are not such as would affect the even tempo of life of the community in the concerned areas so as to warrant an order of detention under Section 3(1) of the Act against him. The order of detention is apparently outside the purview of the Act and cannot be sustained.

11. For the aforesaid reasons, we allow the petition and quash the impugned order of detention. The respondents are directed to immediately release the petitioner if he is not wanted in any other case.