
(2001) 05 AHC CK 0148

In the Allahabad High Court

Case No : Habeas Corpus Petition No"s. 5265 and 13227 of 2001

Inamul Haq Engineer

APPELLANT

Vs

Superintendent, Division/District Jail and Others

RESPONDENT

Date of Decision : 22-05-2001

Acts Referred:

Criminal Law (Amendment) Act — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Explosive Substances Act, 1908 — Section 5
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2001) CriLJ 4398

Hon'ble Judges : R.B. Misra, J;M. Katju, J

Bench : Division Bench

Advocate : Daya Shankar Misra, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned detention order dated 20-1-2001 Annexure 1 to the writ petition passed under the National Security Act.

2. We have the learned counsel for the parties and have perused the affidavits.

3. The petitioner has alleged that he is a businessman and is a member of the Samajvadi Party . It appears from a perusal of the grounds of detention (Annexure 2 to the petition) that on 5-11-2000 at about 7 p.m. the petitioner with his associates (who are Sunni Muslims) attacked persons belonging to the Shia community with firearms and country made pistols and injured them. It alleged that on account of this incident people of the locality due to fear shut the doors of their shops and public order was disturbed and an F.I.R. was registered in Case Crime No. 425 of 2000 u/s 147 148/149/307/504/506, I.P.C. read with Section 5 Explosive Substances Act and Section 7, Cri. Law Amendment Act.

4. It is alleged that on 29-1-2001 when there was relaxation of the curfew the

petitioner along with others armed with knives and spears attacked two persons belonging to Shia community and caused them serious injury which again disturbed the public order and an F.I.R, in Case Crime No. 49 of 2000 was lodged in this connection.

5. It is also stated in the grounds of detention that the petitioner is detained in jail in Case crime No. 425 of 2000 which was later converted into Section 302, I.P.C. and is trying to get himself released on bail and has filed a bail application in Court and the possibility is that he will get bail. In view of the above allegations the impugned detention order has been passed.

6. Learned counsel for the petitioner has firstly submitted that the counter-version of the case has been placed before the detaining authority as alleged in paragraphs 25 and 26 of the writ petition. This counter-version is contained in the documents copies of which are Annexures R.A. 1, R.A. 2 and R.A. 3 of the rejoinder affidavit. These are applications u/s 156(3), Cr.P.C. filed before the learned C.J.M., Azamgarh. On these applications on 16-12-2000 the learned Magistrate directed the S.O. Mobarakpur to register a criminal case in connection with the incident. On 18-12-2000 copy of this order has been sent to S.O. Mobarakpur. In this counter-version it has been alleged that in fact people of this Shia community attacked the Sunnis armed with weapons.

7. In compliance with this order on these applications criminal cases Nos. 3-C, 4-C and 5-C of 2001 have been registered in police station, Mobarkpur. The petitioner's allegation that the counter-version has not been placed before the detaining authority has not been disputed. In Criminal Appeal No. 798 of 1985 Ashok Kumar Dixit v. State of U.P. decided on 22-11-1985 the Supreme Court held that the rival version was certainly a vital circumstance to be considered by the detaining authority before the order of detention was passed, and since that was not taken into consideration the order of detention is vitiated. The same view has been taken by a Division Bench of this Court in Manjoo Tyagi v. Adhikshak, Janpad Karagar 1998 JIC 327. This view has also been taken by a Division Bench of this Court in Ram Khelawan v. State of UP 1998 UP Cri R 95, Munna Jaiswal v. The District Magistrate (1986) 1 Cri 151 : 1986 ALJ 265 and by a Full Bench of this Court in Munni Lal v. Superintendent of Central Jail 1985 AWC 641 (vide paragraph 46). Hence we are of the opinion that on this ground itself the impugned detention order stands vitiated.

8. The next contention of the learned counsel for the petitioner is that no bail application of the petitioner was pending when the impugned detention order was passed. This statement is in paragraphs 19, 20, 28 and 29 of the writ petition. In paragraph 19 of the writ petition it is stated that the petitioner had moved the bail application which was rejected on 22-12-2000 by the Sessions Judge. There is nothing to show that any bail application was pending in the High Court when the impugned detention order was passed. This fact is also not disputed.

9. Learned counsel for the petitioner submitted that in Case Crime No. 49 of 2000 which was regarding some other incident the petitioner has been granted bail but the bail application and bail order was not placed before the detaining authority. In Habeas Corpus Writ Petition No. 2462 of 2001 Billa alias Birla v. Superintendent, District Jail decided on 2001 (1) ALJ 687 a Division Bench of this Court held that if a copy of the bail application which was pending before the Court concerned was not placed before the detaining authority the order stood vitiated in view of the decision of the Supreme Court in State of U.P. Vs. Kamal Kishore and Another, and Dharmendra Suganchand Chelawat and another Vs. Union of India and others, Vijay Kumar Vs. State of Jammu and Kashmir and Others, , Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, Kamarunnissa and Others Vs. Union of India and another, Chhog Singh v. State of U.P. 1993 Cri LJ 182 (All) and Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another, it has been held that if there was no chance for the petitioner to be released on bail (because no bail application was pending) the detention order is invalid. Hence, this argument also prevails and the impugned order is vitiated on this ground also.

10. Learned counsel for the petitioner thirdly submitted that the counter-version of the case contained in Annexures R.A. 1 to R.A. 3 as well as the bail application of the petitioner in Case Crime No. 49 of 2000 were not placed before the State Government before it approved the detention order. This argument also appears to be correct. Hence in view of the decision of this Court in 1984 ALJ 1031 Aruna Shanker v. State of U.P. 1986 AWC 619 Vikram Pratap Singh v State of U.P. the detention order is vitiated.

11. It is not necessary to go into the other arguments raised by the learned counsel for the petitioner. For the reasons given above the petition is allowed. The impugned detention order dated 20-1-2001 is quashed. The petitioner shall be released forthwith unless required in some other criminal or preventive detention case.

12. Before parting with this case we would like to mention that our country is facing huge problems and hence to meet these challenges the people of this country must be united and tolerant with each other, and must not allow themselves to be divided on the basis of caste, creed or religion. We are very sad to learn about the clash between Shias and Sunnis at Azamgarh. In our country Under Article 25 of the Constitution everyone has a right to practise his religion without coercion by anybody. An important feature of our country is that there is tremendous diversity (unlike a country like China, which is broadly homogenous, since 95% Chinese belong to the same Han ethnic group). There are different religions, castes, languages, ethnic groups etc. in our country. Hence the only way this country can remain united and progress is to give equal respect of all castes, religions, communities, lingual and ethnic groups, etc., and the people of such groups should respect each other, and should not fight with each other. It is the object of the enemies of our nation to divide us on the basis

of caste, religion, ethnic and lingual groups (the policy of divide and rule) etc. We should hence be vigilant against agents provocateurs and not allow ourselves to be divided. The unity of our people at this historical juncture is of paramount importance and hence all patriotic and modern minded persons must educate their fellow countrymen about this.

13. In our opinion the fundamental right of freedom to profess and practise any religion enshrined in Article 25 of our Constitution includes the right of any sect of any religion to practise and profess the beliefs and practices of that sect (subject, of course, to the restrictions of public order, morality and health mentioned in Article 25). In U.S. v. Ballard (1944) 322 US 78 the U.S. Supreme Court observed that the right of freedom of religion "embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not put to the proof of their religious doctrines or beliefs. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if these doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect." Thus, in U.S.A., the U.S. Supreme Court has upheld the right of Mormons, Jehovah's Witnesses, and other sects in Christianity to believe in the doctrines of their sects vide *Lovell v. Griffin* 303 US 444 *Cantwell v. Connecticut* 310 US 296 *Torcaso v. Watkins* 367 US 488 etc.

14. Shias and Sunnis are both sects of the same religion, Islam, though they have some differences in beliefs and practices. They should be tolerant to each others, and should not fight with each other. Similarly, there are sects among Hindus, and they too should be tolerant towards each other. People of all religions should be tolerant to other religions, otherwise our country cannot remain strong and united. This is the path shown by our great Emperors Ashok and Akbar who gave equal respect to all religions and sects.

15. During the rule of Nawab Wajid Ali Shah of Avadh it is said that once Holi and Muharram co-incidentally fell on the same day. Since Muharram is an occasion of sorrow, while Holi is an occasion of joy, the Hindus of Lucknow, out of respect for the feelings of their Muslim brethren, decided not to celebrate Holi that year. When the Nawab had buried the Tazia at Karbala he enquired why Holi was not being played and he was told the reason. The Nawab then declared that since Hindus have respected the sentiments of their Muslim brethren, it is the duty of Muslims also to respect the sentiments of their Hindu brethren. Hence he directed that Holi must be played on that day, and he himself was the first to play. Holi, and Holi was played throughout Lucknow although it was also Muharrum. We must emulate the liberalism of the great Nawab.

16. In the Shantiparva of Mahabharat Bhishma Pitamah tells Yudhisthir that every age (Yug) has its own dharma (The word "dharma" in Sanskrit means that which unites). The dharma of the modern age is secularism, and only secularism

can keep our country united. Countries like Pakistan which are theocratic are adharmik, and hence are bound to disintegrate. They are like houses divided within themselves, and as the great American President Abraham Lincoln said, a house divided within itself cannot stand.