
(2017) 04 RAJ CK 0183
In the Rajasthan High Court
Case No : 20 of 2017

Indu Devi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 110](#) - Security for good behaviour from habitual offenders
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#)

Citation : (2017) 04 RAJ CK 0183

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : CS Kotwani, Rajesh Panwar

Judgement

1. The instant Habeas Corpus writ petition has been filed by the petitioner Indu Devi mother of the detenu Bhupendra Singh @ Bhupsa against the order dated 8.11.2016 (Annex.1) passed by the District Magistrate, Bikaner and order dated 19.11.2016 (Annex.4) so also, the order dated 27.12.2016 (Annex.7) passed by the State Government whereby the son of the petitioner Bhupendra Singh @ Bhupsa was ordered to be detained for one year commencing from 9.11.2016 to 8.11.2017 under Section 3 of the Rajasthan Prevention of Anti Social Activities Act, 2006 (hereinafter referred to as the Act of 2006 for short).

2. As per facts of the case, upon report submitted by the Superintendent of Police, Bikaner dated 7.11.2016 for taking action against detenu, the District Magistrate, Bikaner while exercising its power under Section 3(1) of the Act of 2006 considered the report in which on the basis of 13 cases registered against detenu Bhupendra Singh @ Bhupsa, a prayer was made to take action against son of the petitioner under the Act of 2006. The District Magistrate, Bikaner on the basis of above report passed an order to arrest Bhupendra Singh @ Bhupsa on 8.11.2016 and sent the case of detenu for approval to the State Government. The State Government approved the order passed by the District

Magistrate, Bikaner vide communication dated 19.11.2016, thereafter, the case of the detenu Bhupendra Singh @ Bhupsa was placed before the advisory board for confirmation. The advisory board after providing an opportunity confirmed the detention order vide order dated 7.12.2016. The State Government after confirmation by the Advisory Board passed an order on 27/28.12.2016 whereby the petitioner's son Bhupendra Singh @ Bhupsa was ordered to be detained for one year under Section 3 of the Act of 2006.

3. As a matter of fact, the action was taken against detenu Bhupendra Singh @ Bhupsa under Section 3 of the Act of 2006 on the ground that number of cases were registered against him in the various Police Stations of Bikaner punishable under IPC and Arms Act and as per report of the Superintendent of Police, Bikaner, it was not possible for the administration to restrain the criminal activities of the detenu, therefore it was thought it proper to take action against him.

4. According to details incorporated in the report, in all 13 criminal cases were registered against the detenu in different Police Stations of Bikaner under IPC and three entries were also recorded in the Rojnamcha soon before the order of detention dated 8.11.2016 and a complaint under Section 110 of the Cr.P.C. was also filed against detenu.

5. In this writ petition while challenging the aforesaid orders, the learned counsel for the petitioner submits that the order of detention passed against the detenu Bhupendra Singh @ Bhupsa is illegal because it has been passed without application of mind by the District Magistrate, Bikaner. While inviting attention towards the fact that out of 13 cases registered against the detenu, in six cases, he has already been acquitted from the competent criminal trial court and other cases are pending, in none of the case finding of conviction has been recorded against detenu. More so, it is a case in which the District Magistrate, Bikaner has illegally exercised its powers without any material evidence under Section 3 of the Act of 2006. It is also argued that after passing detention order though the case of the detenu Bhupendra Singh @ Bhupsa was referred to the advisory board as contemplated under the Act of 2005, where the detenu Bhupendra Singh @ Bhupsa appeared and submitted his representation (Annex.6) against the detention order, but unfortunately, the advisory board did not consider the grounds raised by him in his representation objectively and approved the detention order on ipsi dixit grounds.

6. Learned counsel for the petitioner further submits that it is a question of liberty of detenu and the material which is taken into consideration for passing detention order loudly speaks that there is no material on record upon which the detenu can be termed as "dangerous person" as defined in the Act so as to take action against him under Section 3 of the Act of 2006.

7. Learned counsel for the petitioner vehemently argued that out of 13 cases registered against detenu under different offences of IPC and Arms Act, the

case nos.1,2,4 and 8 were registered for bailable offences and in none of the case, the detainee has been held guilty. More so, in all pending cases, the detainee has already been granted bail and in six cases acquitted from the charges leveled against him, therefore, it is obvious that the order of detention passed by the District Magistrate, Bikaner on the basis of recommendation made by the Superintendent of Police, Bikaner which is said to be approved by the advisory board, is illegal and unconstitutional because the detainee cannot be termed as "habitual offender" on the basis of reported fact taken into consideration for the purpose of passing detention order of the detainee Bhupendra Singh @ Bhupsa, therefore, all the orders may be quashed and detainee may be set at free.

8. Learned counsel for the petitioner submits that in the Act of 2006 there is provision for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers and to provide security to the public from anti social and dangerous activities of the criminals, but here in this case, action against the detainee Bhupendra Singh @ Bhupsa has been taken by the District Magistrate, Bikaner without application of mind towards the material available on record, therefore, the impugned orders passed on the basis of report of Superintendent of Police, Bikaner deserves to be quashed because as a matter of fact, in most of the cases, the detainee son of the petitioner was wrongly implicated, so also, in half of the cases reported, the competent court of criminal jurisdiction acquitted the petitioner's son Bhupendra Singh @ Bhupsa, therefore, on the basis of material available on record, it cannot be said that action taken against the detainee while treating him as "habitual offender" is not sustainable in law.

9. According to the learned counsel for the petitioner, the detainee is not a bootlegger or immoral traffic offender or property grabber which is evident from the Sections of all the FIRs registered against him, therefore, detainee cannot be treated habitual offender, who disturbed the public order or destroyed the life of public at large, as such, all the three impugned orders may be quashed.

10. Per contra, learned Addl. Advocate General Sh. Rajesh Panwar submitted that on the basis of criminal background of the detainee Bhupendra Singh @ Bhupsa, the District Magistrate passed detailed order on 8.11.2016 on the basis of details of cases reported by the Superintendent of Police, Bikaner after recording reasons under Section 3(1) of the Act of 2006 because due to criminal activities of detainee it became necessary by the administration to take action against him. The detainee against whom history-sheet has been opened at Police Station Sadar, Bikaner remained engaged in criminal activities from the year 2010 and due to continuous criminal activities, the detainee caused eminent danger to the public order. The people who have been victim of his criminal activities, have from time to time, lodged cases against him, however, lodging of criminal cases and action taken under Preventive Law could not yield any result nor could stop the criminal activities of the detainee, which is prejudicial to the public order,

therefore, it was felt necessary to take action against him under the Act of 2006.

11. Learned Addl. Advocate General further submits that although in some of the cases detainee Bhupendra Singh @ Bhupsa has been acquitted from the charges levelled against him, but still number of cases are pending against him in which he is facing trial for different offences, therefore, it cannot be said that action taken against detainee by the District Magistrate under Section 3(1) of the Act of 2006 is illegal or contrary to law in any manner. Learned Addl. Advocate General argued that the activities of the detainee found to be prejudicial to the public order, because number of cases were registered against him, the competent authority, after considering entire material and after due application of mind rightly passed an order for detention which is further confirmed by the State Government and advisory board, therefore, no interference is warranted in this petition. The detainee Bhupendra Singh @ Bhupsa is "dangerous person" and "habitual offender". Therefore, after recording satisfaction upon anti social activities of the detainee Bhupendra Singh @ Bhupsa in the Bikaner city, the order of detention passed which is further approved by the advisory board, therefore, the instant writ petition may kindly be dismissed.

12. After hearing learned counsel for the parties we have perused the report of the Superintendent of Police, Bikaner and entire record of the case, so also perused the order of the advisory board dated 17.12.2016 whereby the order of detention order passed by the District Magistrate, Bikaner and approved by the State Government was confirmed. Admittedly, on the basis of registration of 13 cases against the detainee Bhupendra Singh @ Bhupsa, his case was forwarded to the District Magistrate by the Superintendent of Police, Bikaner for taking action under Section 3 of the Act of 2006. It is worthwhile to observe that the case of the detainee was recommended for taking action on 8.11.2016 but soon before five days, three informations were recorded in the Rajnamcha on 3.11.2016, 4.11.2016 and 6.1.2016 and to check the activity of the detainee complaint under Section 110 of the Cr.P.C. was filed against him. In the report details of the cases registered against the detainee made available to the District Magistrate, Bikaner by the Superintendent of Police, Bikaner are as follows: "VERNACULAR MATTER OMITTED"

13. We have perused the reasons incorporated in the forwarding letter dated 8.11.2016 in which following assertions were made with regard to conduct of the petitioner which reads as under: "VERNACULAR MATTER OMITTED"

14. We have perused the list of cases, which is said to be registered against the detainee Bhupendra Singh @ Bhupsa and find that out of 13 cases he was acquitted from the charges levelled against him after trial, so also, on the basis of compromise in six cases, which is not in dispute. Upon perusal of sections under which the cases were registered against the petitioner it is obvious that till today in none of the case, detainee has been convicted or punished. Out of 13 cases, four cases were registered for bailable offences and no case for serious offence like offence under Section 302, 395 IPC are registered against the detainee

except for offence under Section 307 IPC that too, with the aid of Sections 147, 148, 149 and 34 IPC, but the reasons incorporated for taking action are not at all supporting the fact that the cases registered against detenu has destroyed or disturbed the public order. It is also worthwhile to observe that in the year 2015-16, three cases were registered, one at GRP Police Station, Bikaner in which the detenu has already been acquitted and two cases in which charge-sheets were filed on 30.3.2016 and 9.6.2016 are pending. We have perused the definition of "dangerous person" incorporated in the Act of 2006, which reads as under: "(c) "dangerous person" means a person, who either by himself or as member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 (Central Act No.45 of 1860) or any of the offences punishable under Chapter V of the Arms Act, 1959 (Central Act No.54 of 1959) or any of the offences punishable under first proviso to sub-sec. (1), and sub-sec. (1-A) of Sec. 51 of the Wild Life (Protection) Act, 1972 (Central Act No.53 of 1972) or any offence punishable under sec. 67 of the Information Technology Act, 2000 (Central Act No.21 of 2000).

15. We have considered the finding to treat the detenu as habitual offender in the light of the cases registered against him. It is true that from 2010 to 2016, 13 cases were registered against him but out of those 13 cases, the FIR no.55 dated 16.3.2010 registered at Police Station Sadar, FIR no.11 dated 16.1.2012 registered at Police Station Bichwal, FIR no.255 dated 28.8.2013 registered at Police Station Kotgate and FIR no.349 dated 20.9.2013 registered at Police Station Sadar were registered for bailable offences of IPC. Of course in one case registered in the year 2013 offence under Section 4/25 of the Arms Act but it is also important aspect of the matter that in 6 cases out of 13 cases detenu has already been acquitted from the charges levelled against him and in none of the case he has been convicted or punished by the court having criminal jurisdiction. Therefore, we are of the opinion that before passing detention order against detenu Bhupendra Singh @ Bhupsa the seriousness of the cases were required to be seen because it is a question of liberty of citizen. There is no doubt that under the Act of 2006 power left with the District Magistrate or with the State Government to take action for maintaining public order under the provisions of the Act of 2006 but at the same time, it is also very important duty of the authorities that where the freedom of the citizen is in question then the competent authority should apply its mind so as to protect the right of the citizen. Admittedly, the detenu is 24 years of age and if at this stage, he will be declared as "dangerous person" and "habitual offender" on the basis of such material considered by the District Magistrate, Bikaner then obviously it will affect the future of young boy of 24 years. We cannot lose sight of the fact that every citizen while enjoying fundamental right cannot destroy the public order or to involve himself in criminal activities so as to create danger to the public.

16. Upon consideration of the material available on record and finding of District Magistrate, Bikaner and Advisory Board, at this stage, we are of the opinion that

detenue Bhupendra Singh @ Bhupsa does not fall under the category of "dangerous person" as defined under the Act of 2006 for the simple reason that out of 13 cases, registered from the year 2010 to 2016 in six cases the detenue has already been acquitted from the competent court and it is also accepted position of the case that soon before the recommendation by the case by the Superintendent of Police on 7.11.2016, three reports were recorded on 3.11.2016, 4.11.2016 and 6.11.2016, which itself shows that those reports and entry in the Rojnamcha were in the mind of the Superintendent of Police, Bikaner for making recommendation to take action against him under the Act of 2006. We are in full agreement with the legal position that action should be taken against the "dangerous person", but at the same time, action of welfare State which affects the liberty of the citizen is required to be seen before holding a person as "dangerous person", which affects the right and liberty of the citizen. In this case, admittedly, in none of the case, the detenue has been convicted, he is facing trial in seven cases, in which the detenue can be punished on the basis of evidence on record.

17. In view of the above, the writ petition deserves acceptance to quash the impugned orders of detention passed by the State authorities against the detenue Bhupendra Singh @ Bhupsa son of the petitioner Indu Devi.

18. Consequently, this writ petition filed by the petitioner Indu Devi, mother of the detenue Bhupendra Singh @ Bhupsa is hereby allowed. The impugned orders dated 8.11.2016 (Annex.1) passed by the District Magistrate, Bikaner and order dated 19.11.2016 (Annex.4) and 27.12.2016 (Annex.7) passed by the State are hereby quashed and set aside and the detenue Bhupendra Singh @ Bhupsa be released forthwith, if not needed in any other case. However, it is made it clear that in the event of registration of two fresh cases within six months from the date of this order, then the Superintendent of Police, Bikaner will be at liberty to file an application for cancellation of bail through learned Public Prosecutor in criminal cases pending against the detenue Bhupendra Singh @ Bhupsa. In the event of filing such application for cancellation of bail, it is expected from the learned trial court that the said application will be considered objectively on merit so as to cancel the bail granted to the detenue Bhupendra Singh @ Bhupsa. It is further ordered that after release the detenue Bhupendra Singh @ Bhupsa shall furnish undertaking before the Superintendent of Police, Bikaner that he will maintain peace.