
(1996) 05 AHC CK 0175

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 37978 of 1995

Ishaq (In Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
General Clauses Act, 1897 — Section 21
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 114, 147, 148, 149, 302

Citation : (1996) 20 ACR 550

Hon'ble Judges : R. Dayal, J;Kundan Singh, J

Bench : Division Bench

Advocate : Vinay Saran, for the Appellant; A.G.A., for the Respondent

Judgement

R. Dayal, J.—The Petitioner, Ishaq, has filed this petition under Article 226 of the Constitution for a writ, order or direction in the nature of Habeas Corpus directing the Respondents to set him at liberty.

2. The Petitioner has been detained in District Jail, Meerut, pursuant to an order passed on 3.10.1995 by the District Magistrate, Ghaziabad u/s 3(2) of the National Security Act (hereinafter referred as the Act) in exercise of the powers conferred upon him under Sub-section (3) of Section 3 of that Act in order to prevent him from indulging in an activity prejudicial to the maintenance of public order. A copy of that order is Annexure 1 to the writ petition. Alongwith the order of detention, grounds of detention (Annexure 2) were also served on the Petitioner. The grounds may be summarised as under:

On 13.9.1995 on the public road in Mohalla Kailash Nagar, District Ghaziabad, which is densely populated by Hindus and Mohammadans, you at 8.30 p.m., alongwith your associates, Nasir All, Ayub, Harun, Mahboob, Maharaj and Julley murdered Naresh by shooting at him by a revolver and country-made pistols and when people in the mohalla tried to check you in your activity, you creating an

atmosphere of fear and terror by firing in the air, were successful in making good your escape from the scene of occurrence. As a result of your acts, shopkeepers closed their shops and ran away and traffic came to a stand still. There was a complete breach of public order in the area. First information report of the incident was lodged by Smt. Ram Adhari, mother of the deceased, as a result of which a case was registered against you under Sections 147, 148, 149, 302 and 114, I.P.C. A situation of communal tension was created and in view of this communal tension, two platoons of C.R.P. were got summoned and with their assistance and also the assistance of the other police force effort was made to bring about public order. This incident was reported in the newspapers on 13.9.1995 and 14.9.1995 and the situation started normalising from 16.9.1995. On account of the increase of pressure of the police, you surrendered in Court on 18.9.1995. An application for bail moved by you was rejected by the Chief Judicial Magistrate, Ghaziabad. Thereafter, an application has been filed before the Sessions Court in which 5.10.1995 is fixed and there is every likelihood of your being released on bail. By the acts indulged in by you and your associates on 13.9.1995, a situation of communal tension has been created and public order has been breached and there is every likelihood that after being released on bail, you will again indulge in acts which may result in breach of public order. I am satisfied that in order to prevent you from indulging in acts which may be prejudicial to the maintenance of public order, it is necessary to detain you. You may make representation against your detention to the State Government through Home Secretary. You are also informed that your matter will be referred to the Advisory Board u/s 10 of the Act. You are also informed that if you want to be heard personally by the Advisory Board, you should make a mention about it in your representation; or you may inform the State Government through the Superintendent of Jail.

3. The Petitioner has alleged in the writ petition that the Central Government has the power u/s 14 of the Act to revoke the order of detention and so he had a right to make representation to the Central Government, but he was deprived of exercising this right as he was never informed of such right. Some other grounds have also been taken in the petition but they were not pressed at the time of arguments and, therefore, it is not necessary to make a mention of them.

4. One counter-affidavit has been filed by Dr. B.P. Nilaratna, District Magistrate, Ghaziabad, who passed the detention order. He has deposed that the activities of the Petitioner are prejudicial to the maintenance of public order. He has also stated that there was no obligation on the detaining authority to intimate the Petitioner that he could make a representation to the Central Government. The Petitioner has no statutory or constitutional right to make any representation to the Central Government. According to this affidavit, the Central Government has the power to pass an order of revocation on the basis of the information received or supplied. The case taken in this affidavit is that u/s 8(1) of the Act and under Article 22(5) of the Constitution, obligation is only to inform the detenu for making a representation to the appropriate Government, which is the State

Government. Further, it is averred that the Petitioner submitted his representation to the District Jail, Meerut on 24.10.1995 which was received by the deponent on 25.10.1995 and since there were some disputed facts mentioned in the representation, the deponent sent the representation to the Senior Superintendent of Police, Ghaziabad who sent the same to the Station House Officer, Police Station Vijaynagar, District Ghaziabad. The Station House Officer prepared his comments on 28.10.1995. The comments of the sponsoring authority on the representation of the Petitioner were received in the office of the deponent on 30.10.1995. Thereafter, he sent the representation alongwith the comments to the State Government. The State Government rejected the representation of the Petitioner on 6.11.1994. In another affidavit, Sri Surendra Gera, Jailor, District Jail, Meerut, has deposed that the Petitioner had made a representation to the Central Government which was rejected by that Government vide communication dated 16.11.1995 and the same was received in the office of Respondent No. 3, the Superintendent of Meerut Jail, on 21.11.1995 and the Petitioner was informed about this on that very date. Another affidavit has been filed by Sri Gopal Datt, Upper Division Assistant in Confidential Section 7 of U.P. Civil Secretariat, Lucknow to the effect that the Petitioner's representation dated 24.10.1995 addressed to the Home Secretary, U.P. Lucknow and endorsed to the Home Secretary, Government of India, New Delhi was forwarded by the District Magistrate, Ghaziabad alongwith his comments to the State Government on 31.10.1995. The same was received by the State Government on 1.11.1995. The State Government placed the representation alongwith the comments of the detaining authority before the Advisory Board on 1.11.1995. Deputy Secretary and Special Secretary, Home examined it on 2.11.1995 and forwarded it to the higher authorities for final order. Finally, the said representation was rejected by the State Government on 3.11.1995. The fact about the rejection of the representation was communicated to the Petitioner through the district authorities on 6.11.1995 as 4th and 5th of November, 1995 were holidays. According to this affidavit, the representation was decided expeditiously at every stage by the State Government. Further it is said that a copy of the representation alongwith the comments was sent to the Secretary, Ministry of Home Affairs, New Delhi by the State Government on 1.11.1995, and the Ministry of Home Affairs, New Delhi vide their telex message dated 16.11.1995 intimated to the Petitioner through the Superintendent, District Jail, Meerut as well as to the State Government that the aforesaid representation was rejected by the Central Government. Another affidavit was filed by Sri Yash Kumar Gupta, Additional Sub-Divisional Magistrate, Ghaziabad on 3.5.1996. According to him, the Petitioner alongwith his representation sent to the State Government attached copies thereof to be sent to (i) the Chairman, Advisory Board, U.P. Lucknow, (ii) District Magistrate, Ghaziabad, (iii) Superintendent, District Jail, Meerut and (iv) Home Secretary, Government of India, New Delhi. The Petitioner also made a note on his representation that on his behalf, his wife, Smt. Asarfi, had already sent a representation addressed to the President of India. Thus, the Petitioner was aware that a representation had

already been sent on his behalf by his wife to the Central Government. A copy of the representation sent by Smt. Asarfi was received in the office of the District Magistrate, Ghaziabad. A wireless message was also received from the Home Department, New Delhi by the Home Secretary, U.P. Lucknow. A copy of this wireless message was also received in the office of the District Magistrate, Ghaziabad on 10.11.1995. A copy of this wireless message dated 27.10.1995 which was available on the record with the learned Addl. Public Prosecutor has been kept on record. By this wireless message, parawise comments on the representation were called for. Opinion of the Advisory Board was also required to be intimated. It is further stated in the affidavit that the District Magistrate, Ghaziabad sent this representation to the Senior Superintendent of Police for his comments, who in turn sent the same to the Station Officer, Police Station Vijaynagar, Ghaziabad on 11.11.1995. The Station Officer of Police Station Vijaynagar prepared his comments on the representation on 12.11.1995. On 13.11.1995 District Magistrate, Ghaziabad sent copies of comments and representation made by Smt. Asarfi on behalf of the Petitioner to the Secretary, Government of U.P. Lucknow. Further, it is said that in the representation made by Smt. Asarfi, a prayer has been made that the detention order against the Petitioner might be revoked. It is further stated that since the Petitioner moved a representation through his wife, the provisions of Section 4 of the Act have been fully complied with.

5. Sri G.S. Chaturvedi, learned Counsel for the Petitioner, has submitted that the detention order is not sustainable on one solitary incident. He has further submitted that in order to comply with the provisions of Article 22(5) of the Constitution, it is essential for the detaining authority to communicate to the Petitioner that he had a right to make a representation to the Central Government u/s 14 of the Act and since the Petitioner was not communicated about this right, continued detention of the Petitioner is vitiated by illegality. On the other hand, Sri Mahendra Pratap, learned Addl. Public Prosecutor, has submitted that no plea about the want of satisfaction on the part of the District Magistrate was taken in the petition and as such the argument of the learned Counsel for the Petitioner about the non-sustainability of the impugned order of detention on one solitary incident is not available to him. Further, he has submitted that one solitary incident on the facts of the case is sufficient to sustain the order of detention. His further submission is that u/s 8(1) of the Act, the Petitioner has a right to make representation only to the State Government and as the Petitioner was communicated about this right in the grounds of detention, there has been no violation of the provisions of Article 22(5) of the Constitution. Further he has submitted that the Petitioner has not been deprived of the right to make the representation to the Central Government, since he has already made a representation to the Central Government by sending a copy of the representation made to the State Government, to the Central Government and also by sending another representation to the Central Government through his wife.

6. Thus, only two points arise for decision in the petition: (i) whether the impugned order of detention is sustainable on the ground of one solitary incident in the facts and circumstances of the case and (ii) whether there has been violation of Article 22(5) of the Constitution, since the Petitioner was not informed of his right in the grounds of detention that he had the right to make representation to the Central Government.

7. As regards the first point, while dealing with a similar ground in another case, we observed in *Vijai Pal alias Pappoo v. Union of India and Ors.* Civil Misc. Habeas Corpus Petition No. 6852 of 1996, decided on 24.4.1996:

Their Lordships of the Supreme Court held in *State of Gujarat Vs. Adam Kasam Bhaya*, , that the "High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been based by the detaining authority on materials on record, then the Court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in Section 3 is the satisfaction of the detaining authority and not of the Court." Again it was observed in *Smt. K. Aruna Kumari v. Government of Andhra Pradesh and Ors.* 1988 SCC 116, that "it has long been established that the subjective satisfaction of the detaining authority as regards the factual existence of the condition on which the order of detention can be made, namely, the grounds of detention constitute the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the Court, on a review of the grounds, substitute its own opinion for that of the authority." In *U. Vyayalakshmi v. State of Tamil Nadu* 1995 SCC 176 , the Apex Court said that "it is not for the Court to probe into the correctness of the alleged facts since this Court has a limited role in the matter of examining the validity of the detention order." Their Lordships reiterated in the *State of U.P. Vs. Kamal Kishore and Another*, , the law laid down in *Gulab Mehra Vs. State of U.P. and Others*, that whether an act relates to law and order or to public order depends upon the effect of the action on the life of the community or, in other words, the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of community, it will be an act which will effect public order." Dealing with the question as to whether one solitary incident can be the basis of an order of detention, their Lordships observed in *Smt. Bimla Rani v. Union of India and Ors.* 1989 SCC 756, that "the question is whether the incident had prejudicially affected the public order. In other words, whether it had affected the even tempo of life of the community. As observed in *Alijan Mian* case, it is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order and that even one incident may be sufficient to satisfy the detaining authority in that regard depending upon the nature of the incident." Again their Lordships

pointed out in Attorney General for India and Ors. v. Amrat Lal Prajivandas and Ors. 1994 SCC 1325, which is a decision rendered by nine learned Judges of the Apex Court that "though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity.... If, however, in any given case a single Act is found to be not sufficient to sustain the order of detention, that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

8. It is thus clear that an order of detention can be based on one solitary act. Whether that solitary act is sufficient or not to sustain the order of detention depends upon the gravity and nature of the act and also whether the act is an organised act or a manifestation of organised activity. In the instant case, murder was caused of a person belonging to another community by the Petitioner alongwith several others in the main market on the public road, when the Petitioner alongwith his associates was armed with revolver and countrymade pistols. When the people of the area tried to stop the Petitioner and his associates, they fired shots and created an atmosphere of terror which resulted in the closure of the market and stoppage of traffic and public order was disturbed. Two platoons of C.R.P. had to be summoned in view of the communal tension created. Thus even tempo of life of the community was disturbed. The act is such that it gives rise to an inference that the Petitioner would continue to indulge in similar prejudicial activity. So. in the facts and circumstances of the case the order of detention on one solitary incident mentioned in the grounds of detention was sufficient to sustain the order of detention. In this view of the matter, we do not think it necessary to consider whether this plea was available to the Petitioner since no ground about the lack of satisfaction was taken in the petition.

9. As regards the other ground. Section 8(1) of the Act specifically provides that the authority making the order of detention shall afford the person who is detained in pursuance of the detention order the earliest opportunity of making a representation against the order to the appropriate Government. The learned Addl. Public Prosecutor has submitted that this opportunity was afforded to the Petitioner by communicating to him that he would make representation to the State Government and, as such, compliance of Section 8(1) of the Act has been made and this also amounts to making of compliance of Article 22(5) of the Constitution. Section 14 of the Act specifically provides that without prejudice to the provisions of Section 21 of the General Clauses Act, the detention order may at any time be revoked or modified by the Central Government. The learned Addl. Public Prosecutor has submitted that the power of the Central Government

to revoke the order of detention u/s 14 has no nexus with the right of the detenu to make representation under Article 22(5) of the Constitution and as such, even if the detenu was not communicated the information that the Central Government had the power to revoke the order of detention, no violation of Article 22(5) has taken place. However, the argument of the learned Addl. Public Prosecutor runs counter to the decision of the Apex Court in Veeramani Vs. State of T.N., , where it was observed:

17 ... It may be noted that Article 22(5) casts an obligation on the detaining authority to communicate to the detenu the grounds and to afford to the detenu the earliest opportunity of making the representation. The Article does not say to whom such representation is to be made but the right to make a representation against the detention order undoubtedly flows from the constitutional guarantee enshrined therein. The next question as to whom such representation should be made, depends on the provisions of the Act and naturally such a representation must be made to the authority who has power to approve, rescind or revoke the decision.

This authority clearly lays down that the right to make representation under Article 22(5) includes the right to make representation before the authority who has power to revoke the order of detention. Thus, in view of Article 22(5) of the Constitution read with Section 14 of the Act, the Petitioner had the right to make representation before the Central Government. This right to make representation to the Central Government imposed a corresponding duty on the detaining authority to communicate to the Petitioner about the right to make the representation to the Central Government, so that the detenu could avail of this right. It was to be held in a Division Bench judgment of this Court made on 15.12.1994 in Keshav Babu Shivhare v. Superintendent of District Jail, Hamirpur and Ors. Habeas Corpus Writ Petition No. 27208.

10. Now, the question is whether the Petitioner, in the instant case, has been denied the right to make representation to the Central Government? It is clear from the note made by the Petitioner in his representation made to the State Government that he was aware of his right to make representation to the Central Government and that a representation had already been made on his behalf by his wife. He also sent a copy of the representation made to the State Government to the Central Government. Sending a copy of the representation made to the State Government to the Central Government with the knowledge that he had the right to make representation to the Central Government amounted to making representation to the Central Government. Furthermore, making of representation on his behalf by his wife also amounted to making representation to the Central Government on his behalf. Thus, failure on the part of detaining authority to make a mention in the grounds of detention that the Petitioner had the right to make representation to the Central Government did not result in denial to the Petitioner of his right to make representation to the Central Government. However, the learned Counsel for the Petitioner has

submitted that denial of the right to make representation under Article 22(5) of the Constitution resulted merely because of the failure on the part of the detaining authority to communicate to the Petitioner about this right to make representation and the fact that the Petitioner made a representation is of no consequence since the plea of "no prejudice" is not relevant as regards the constitutional right relating to liberty. However, we are not impressed with this submission. It is worth mentioning that Article 22(5) of the Constitution does not specifically mention that the detenu has a right to be informed about his right to make representation. Section 14 of the Act also does not make any such provision. The Courts nevertheless have held that the right to make representation under Article 22(5) of the Constitution involves the right to be informed about such right, so that the detenu could avail of this right. It is significant that right to be informed is recognised (sic) as a necessary adjunct to the right to make representation. But where the detenu has availed of this right, it is not open to him to say that denial to make representation has resulted merely because of the failure on the part of detaining authority to communicate to him of such right. The submission that in matters relating to a fundamental right concerning liberty, the question as to "no prejudice" is irrelevant, runs counter to the following observations made by their Lordships of the Apex Court in *Veeramani v. State of Tamil Nadu* (supra) in para 9:

9... Even otherwise the non-supply of the statement u/s 161, etc. which are only in support of the contents of F.I. Rs. did not cause any prejudice to the detenu and as a matter of fact while making the representation, the detenu did not ask for any such document.

Furthermore, in *State of Uttar Pradesh Vs. Zavad Zama Khan*, , representation made by the detenu to the State Government was forwarded by the State Government to the Central Government and was duly considered by the Central Government. That representation was held to be nothing but a representation for revocation of the order of detention u/s 14 of the Act. The Court observed:

13... In the present case, the detenu was not deprived of the right of making a representation to the detaining authority under Article 22(5) of the Constitution read with Section 8(1) of the Act. Although the detenu had no right to simultaneously make a representation against the order of detention to the Central Government under Article 22(5) and there was no duty cast on the State Government to forward the same to the Central Government, nevertheless the State Government forwarded the same forthwith. The Central Government duly considered that representation which in effect was nothing but a representation for revocation of the order of detention u/s 14 of the Act. That being so it was not obligatory on the part of the Central Government to consider a second representation for revocation u/s 14.

As stated earlier, it is clear from the affidavits of Sri Gopal Datt and Yash Kumar Gupta that the representation made to the Central Government was rejected by the Central Government after consideration.

11. Thus, we see no merit in the petition.

12. Accordingly, the petition is dismissed. In the circumstances, there shall be no order as to costs.