
(1985) 09 AHC CK 0012
In the Allahabad High Court

Ishtiaq Hussain Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-09-1985

Acts Referred:

National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 160

Citation : (1986) CriLJ 1448

Hon'ble Judges : G.B. Singh, J;B. Kumar, J

Bench : Division Bench

Judgement

G.B. Singh, J.—This is a petition for issue of a writ of habeas corpus quashing the detention order dt. 13-5-1985 and directing the respondents to release the petitioner forthwith.

2. The petitioner has challenged the order of detention dt. 13-5-1985 (Annex, 1) passed by the District Magistrate, Lucknow u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act). The grounds of detention (Annex. 2) were served upon the petitioner in District Jail, Lucknow on the same day on which the order of detention was passed. While serving the grounds of detention the petitioner was directed to file representation, if any, to the State Government addressed to the Home Secretary through Superintendent Jail. The District Magistrate reported the matter to the State Government with the grounds on which the order had been made and the State Government approved the detention order. The petitioner made representation against the order of detention on 23-5-1985. The District Magistrate after obtaining the report of the Superintendent of Police, Lucknow forwarded it with comments to the State Government which rejected the representation on 1-6-1985. The petitioner was communicated the rejection of his representation by the State Government vide its communication dt. 3-6-85 and it was received by the petitioner on 4-6-1985. The present writ petition was filed on behalf of the petitioner on 10-6-85 challenging the validity of the order of detention on various grounds.

3. The grounds of the order of detention are four in number. The first ground is that on 11-2-1985 the auction for collecting skins and bones was to take place in the building of Zila Parishad, Lucknow. At about 4 PM the petitioner on one hand and Niroz Hasan and Firoz Hasan, sons of Zahir Hasan on the other exchanged words about the auction and then scuffle started resulting in breach of the peace within the premises of Zila Parishad due to which they were arrested by the police for an offence u/s 160, IPC. The second ground is that on 3-3-1985 at about 9 a.m. Zahir Hasan and his son Firoz Hasan went to the leather market of Mohamood Nagar. It was market day of the village. The petitioner along with his three companions arrived there on a motorcar and shot dead Zahir Hasan Khan and ran away with the result the people in the market were horrified and ran helter-skelter with their belongings and normal functioning of the market was disturbed. The third ground is that on 19-4-85 at about 6 PM the petitioner met Firoz Hasan in a grove while he was coming back after doing "pairvi" in the case started in connection with the murder of his father Zahir Hasan; and asked him not to do "Pairvi" otherwise he would also meet the fate of his father. The last ground is that on 22-4-1985 at about 8 a.m. the petitioner met Zafar Khan resident of village Bakhtyar Nagar who is an eye-witness of the murder of Zahir Hasan and threatened to kill him in case he would give evidence against him in that murder case.

4. The first information reports about all these four incidents were lodged. The copies of these first information reports were given to the petitioner while the grounds of detention were served on him. On the basis of the aforesaid grounds and the fact that an application for bail had been moved on behalf of the petitioner in the aforesaid murder case and there was likelihood of his being released on bail the District Magistrate felt satisfied that his activities were prejudicial to the maintenance of Public Order and as such it had become necessary to detain him under the Act.

5. The detention order has been mainly challenged on the ground that the reasons given for detention are confined simply to the problem of law and order and not to public order and there has been no compliance of certain legal obligations and as such the order of detention is bad in law.

6. It was firstly argued by the learned Counsel for the petitioner that there was delay by the State Government in considering and in communicating the rejection of the representation of the detenu and as such the detention order stands vitiated in the eye of law. We do not find any force in this submission. The order of detention was passed and served on 13-5-85. The petitioner made representation on 23-5-85. The District Magistrate undisputedly forwarded the papers to the State Government on 27-5-1985 after obtaining the report of the S.S.P. Lucknow. It is also undisputed that the District Magistrate called for the report of the S.S.P. Lucknow on 23-5-1985 and received the same on 25-5-85 and since 26-5-85 was Sunday he could forward the representation with his comments on 27-5-85. The Counter affidavit filed on behalf of the U.P. State

further shows that the representation of the petitioner was received in the Secretariate on 27-5-85 and it was examined by the Joint Secretary and the Home Secretary on 29-5-85 and was sent to the Chief Minister for orders on 30-5-85. The counter-affidavit further shows that the Chief Minister was not available so the file was sent to the Chief Secretary who has been authorised to deal with the representations of the detenu under the Rules of Business in case the Chief Minister is out of station. The Chief Secretary rejected the representation on 1-6-85. Since 2-6-85 was Sunday the formal order was drawn up on 3-6-85 and it was served on the detenu on 4-6-85. A glance on the aforesaid facts clearly reveals that there was no inordinate or unreasonable delay in considering and disposing of the representation of the petitioner. It, on the other hand, appears to have been dealt with reasonable promptness and diligence. Thus, the time taken in disposal of the representation and communication of the decision of the State Government has been satisfactorily explained and there does not appear to be a go-slow movement of the Government employees. Thus the detention order cannot be held to be vitiated on account of delay in disposal of the representation or in communicating its rejection.

7. Learned Counsel for the petitioner argued that the District Magistrate should have sent the representation on 23-5-1985, the day on which he received the representation from the detenu and there was no need for taking report of the Senior Superintendent of Police (S.S.P.), Lucknow and thus three days' time was wasted in forwarding the representation to the State Government. He further argued that the representation had been rejected on 1-6-1985 and there was no sense in causing delay in communicating the result till 4-6-1985. There is no substance in these arguments. The detention order was passed on certain criminal activities of the detenu. He had denied in his representation that he took any part in those activities and asserted that the allegations to that effect were baseless. In view of this denial the report of the S.S.P. Lucknow became necessary and the District Magistrate, therefore, did not commit any illegality or irregularity in taking some time in obtaining the report of the appropriate authority in that connection. Similarly, when the representation had been rejected on 1-6-1985 and 2-6-1985 was Sunday and since some reasonable time must have been taken in the movement of the file and preparation of the formal order it cannot be said that in communicating the result on 4-6-1985 there was an unreasonable delay. The submissions do not therefore, indicate in any way that there was any delay in considering and disposal of the representation made by the detenu.

8. It is useful to refer in this connection to a recent decision of the Hon'ble Supreme Court reported as Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another, . It was a case of detention under the Act and there was a delay of six days between the receipt by the District Magistrate (the detaining authority) of the comments from the Senior Superintendent of Police on the representation and despatch of the representation to the State Government.

While rejecting the contention based on delay and its effect on the order of detention the Supreme Court observed in para 4 as given below:

In this context we consider it necessary to emphasise that the question whether the representation submitted by a detenu has been dealt with all reasonable promptness and diligence is to be decided not by the application of any rigid or inflexible rule or set formula nor by a mere arithmetical counting of dates, but by a careful scrutiny of the facts and circumstances of each case; if on such examination it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/State Government in dealing with the representation, the Court will undoubtedly treat it as a factor vitiating the continued detention of the detenu; on the other hand, if the Court is satisfied that the delay was occasioned not by any lack of diligence or promptness of attention on the part of the party concerned, but due to unavoidable circumstances or reasons entirely beyond his control, such delay will not be treated as furnishing a ground for the grant of relief to the detenu against his continued detention....

9. The principle enunciated by the Supreme Court when applied to the facts of the present case makes it clear that the argument advanced on the ground of alleged delay does not hold water.

10. It was next contended by the learned Counsel for the petitioner that the petitioner was not supplied with the documents relied upon by the District Magistrate in passing the detention order and the documents demanded by the petitioner with the result he could not make effective representation and thus prejudice was caused to him and as such the detention order cannot be allowed to stand, we do not agree with this contention also. After making representation on 23-5-1985 the petitioner moved an application on 3-6-1985 for supply of copies of his statements recorded. Learned Counsel for the petitioner on the basis of this application tried to impress upon the court that he wanted copies of the statements of the witnesses recorded during investigation. However, the photostat copy of the application dt. 3-6-1985 (Annex. B-I) given by the petitioner has been filed along with supplementary counter-affidavit of the District Magistrate and it clearly shows that the petitioner prayed for supply of copies of his statements which were recorded after the incident and before 13-5-85 when the detention order was passed. Annexure B-3 of the supplementary counter-affidavit further shows that only one statement of the petitioner was recorded and the copy of that statement was supplied to him. There is no dispute about the assertions made on behalf of the opposite parties in this regard. Thus, it cannot be contended on behalf of the petitioner that the documents demanded by him were not supplied by the opposite parties.

11. So far as the other part of the argument is concerned learned Counsel for the petitioner argued that he was not supplied with the copy of the statement of Asgar, a co-accused in the murder case. The District Magistrate neither referred to nor relied upon this statement while passing the detention order. The

petitioner never made any request for supplying him a copy of this statement. It could not be explained on behalf of the petitioner as to how the statement of Asghar was relevant in making the effective representation against the detention order. Thus, this argument also does not prevail. It was also pointed out by the learned Counsel for the petitioner that the District Magistrate in his counter affidavit referred to obtaining of contracts by the petitioner in the names of his persons and involvement of the petitioner in some other criminal cases which gives an impression that the satisfaction of the District Magistrate was based on some other materials and since those documents were not supplied much prejudice has been caused to the petitioner. This argument is also devoid of any substance. These facts are neither referred to nor relied upon in the grounds of detention order. It seems that the District Magistrate referred to these incidents in the counter-affidavit because the petitioner pleaded unblemished character and no concern with the criminal activities specified in the grounds. Thus the mention of these facts in the court-affidavit does not indicate in any way that the petitioner was entitled to the documents relating to these incidents and since they were not supplied the detention order has become assailable. In *State of Punjab and Others Vs. Jagdev Singh Talwandi*, the following observations made in para No. 19 appear relevant:

It was further argued by the learned Counsel that the detaining authority should have disclosed the evidence on the basis of which the order of detention was passed because, in the absence of knowledge of such evidence, the respondent could not have made an effective representation against the order of detention. There is no substance in this contention. It is not the law that the evidence gathered by the detaining authority against the detenu must also be furnished to him.

12. The Supreme Court after referring to certain cases made further observations in para 23 as below:

These cases show that the detenu is not entitled to be informed of the source of information received against him or the evidence which may have been collected against him as, for example, the evidence corroborating that the report of the CID is true and correct. His right is to receive every material particular without which a full and effective representation cannot be made. If the order of detention refers to or relies upon any document, statement or other material, copies thereof have, of course, to be supplied to the detenu as held by this Court in *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, . That question does not arise here since no such thing is referred to or relied upon in the fresh ground of detention.

13. The observations made in the aforesaid case also indicate that the petitioner was not entitled to copies of the aforesaid documents and there has been no infraction of law in not supplying the copies of such documents to him.

14. The third point pressed by the learned Counsel for the petitioner is that there

is no proximity between (Sic) basis of which the detention order has been passed, are of 11-2-1985, 3-34985, 19-4-1985 and 22-4-1985 and the detention order was passed on 13-5-1985. It is, therefore, clear that the detention order was passed within three weeks of last criminal activity of the petitioner and about three months after the first incident. About all these four incidents the first information reports had been lodged and the authorities must have taken some time in their investigation and considering if the activities of the petitioner and (Sic) prejudicial to the maintenance of public order. The need for passing the detention order was felt when the petitioner was likely to be released on bail and he may indulge in the criminal activities in future. All the four incidents took place in quick succession. Thus the time lag between the alleged prejudicial activities of detenu and the detention order is not ex facie long and there appears no inordinate delay in passing the order of detention after the occurrence of the incidents relied upon by the detaining authority. It has been held in *Gora Vs. State of West Bengal*, that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. The Supreme Court has observed in an other case *Kamal Pramanik Vs. The State of West Bengal*, that there should not be inordinate delay in passing the detention order after the alleged incidents and if the time lag is long it should be explained. In the present case, there is no inordinate delay and as such the detention order cannot be challenged on the ground of want of proximity between the incidents and the detention order. This contention of the learned Counsel for the petitioner also does not, therefore, succeed.

15. The last point pressed by the learned Counsel for the petitioner is that the criminal activities of the petitioner on the basis of which the detention order has been passed are directed against a particular set of persons and do not trouble the community at large and as such on their basis the satisfaction of the District Magistrate that they are prejudicial to the maintenance of the public order could not be arrived at and these acts simply cause a breach of law and order only and are not serious enough to disturb the public order. Learned Counsel for the opposite parties on the other hand argued that the activities of the petitioner are prejudicial to the maintenance of public order and detention order cannot be assailed on this ground. After having considered the grounds we are of the opinion that there is much force in the contention of the learned Counsel for the petitioner.

16. The incident dt. 11-2-85 took place within the premises of Zila Parishad, Lucknow while the Theka for skin and bones was going to be auctioned. In that incident Hatha-Payee and Patka-Patki took place between Istiaq Hasan Khan, the petitioner on one hand and Niroz Hasan and Firoz Hasan sons of Zahir Hasan on the other. In the first information report lodged in connection with the incident by the Sub-Inspector S. P. Shukla, P. S. Wazirganj, Lucknow, it was mentioned that due to scuffle there was an apprehension of breach of the peace. It is true that this incident took place in a public place in presence of some members of police

force but on its basis alone it cannot be said that it disturbed the public tranquillity or the current of life of the society. The incident affected two individuals only. The scuffle started all of a sudden in connection with auction bidding without any previous background and it did not have any impact on the members of the locality in which it took place. This act of the petitioner did not create such a terror in the locality as to affecting normal life of the community. Thus, it does not be (Sic) beyond the breach of law and order.

17. The next incident is of 3-3-85 in which Ishtiaq Hasan Khan, petitioner and three others committed murder of Zahir Hasan. The first information report lodged about this incident is to the effect that Ishtiaq Hasan Khan and his three associates including Asghar came on a motor ear to the leather market of Mohamood Nagar and Ishtiaq Hasan Khan and Asghar fired shots from their guns at Zaheer Hasan due to which the latter received injuries and died and the petitioner and the other assailants went away on that motor car towards Lucknow. It is undoubtedly mentioned in the first information report that on account of this incident horror and panic was created and the people ran helter-skelter taking away their belongings but it does not mean that it was a case of breach of public order. This incident also affected specific individuals, namely Zahir Hasan and his sons. There is nothing in the first information report lodged about this incident or subsequent reports of the police that tempo of life of the community was disturbed. Every assault resulting in death in such a place can create horror or cause panic and terror in those who are the spectators of such an incident but from that it does not necessarily mean that even tempo and current of the life of the community was disturbed due to which holding of market was affected in any way. It may be added that this incident may be infraction of law and order and such infractions are bound in some measure to lead to disorder but every infraction of law and order does not result in public disorder.

18. It has been held in *Dipak Bose alias Naripada Vs. State of West Bengal*, that the acts of assault in public place resulting in death of victim may cause horror and panic but do not necessarily cause disturbance of public order. In this reported case the grounds of detention alleged that the detenu along with his associates armed with certain weapons including bombs committed murders of two specified individuals on a public road on two different dates and thereby created panic and horror in the locality. It was observed that the grounds related to and fell within the area of law and order, and were not relevant to the maintenance of public order and the detention was therefore illegal. In *Ajay Dixit Vs. State of U.P. and Others*, detention order was passed on the basis of incidents of murder, attempt to murder and other criminal activities of the petitioner; It was held that the grounds mentioned were not of such magnitude as to amount to apprehend disturbance of public order nor was there any evidence that for any conduct of the detenu public order was endangered or there could be reasonable apprehension about it. It was further held in this case that it is necessary in each case to examine facts to determine not the sufficiency

of the grounds nor the truth of the grounds but nature of the grounds alleged and see whether these are relevant or not for considering whether the detention of the detenu is necessary for maintenance of public order and the grounds are of such a nature as to lead to any apprehension that the even tempo of the community has been endangered. It was also held that the aforesaid incidents were not prejudicial to maintenance of public order and as such the detention order was not justified. In *Ashok Dixit v. State of U.P.* W.P. No. 11151 of 1984 decided on 1-8-1985 : reported in 1985 ALJ 1222, by a Full Bench of Allahabad High Court it was laid down that merely because the activity in a public place creates terror among the spectators does not necessarily have the potentiality to affect the even tempo of the life of the community and even if the act attributed is reprehensible and yet it concerns only specific individuals and thus affects law and order only.

19. The incident under consideration does not indicate that the petitioner and his associates behaved at the time of the murder in such a fashion as to disturb even tempo of the life of the community by creating terror in the mind of the persons present there. They did not threaten to kill the spectators nor did they fire indiscriminately at the time of occurrence. Their criminal activity was directed against a particular individual only and after causing injuries to him they went away silently. The murder was committed on account of personal animosity. Thus no impact was created upon the local community as a whole. It does not, therefore, appear to be an incident of public disorder.

20. The third incident is on 19-4-1985. Firoz Hasan Khan son of Zahir Hasan Khan, who was murdered on 3-3-85 lodged report on 20-4-85 to the effect that Ishtiaq Hasan Khan petitioner threatened to kill him in case he would do "Pairvi" in the murder case of his father. The other incident of 22-4-85 relates to Zafar Khan who is a witness in the murder case. According to the first information report lodged by him Ishtiaq Hasan Khan petitioner threatened to kill him in case he would give evidence against him. There is nothing on record showing that in pursuance of any threat Zafar Khan filed any affidavit denying of having seen the incident and Firoz Hasan was terrified so much that he did not do "pairvi" in the murder case. Mere threats to a witness and a "pairokar" in a murder case also are directed against specific individuals and do not affect the community at large. In the above referred to case of *Ashok Dixit v. State of U.P.* 1985 ALJ 1222 it was held that:

The question whether holding out threats to witness is prejudicial to public order depends upon the facts of each case. The circumstances, the manner and the setting in which the threats may have been given to the witness and the likelihood of its effect on the public should be considered. If the threat is given to the witness publicly with show of force or firing gunshots or using bombs in a blatant manner to terrorise them the same may relate to public order. But if threat is given to an individual without any show of force or any other overt act, it may have no nexus with public order.

21. In the present case, the alleged threats were not extended in a public place before members of the public with any Show of force Thus these two incidents also cannot be said to be prejudicial to the maintenance of public order.

22. It is, therefore, clear that the four incidents, which had been made basis for passing detention order, are infractions of law and order and do not go to show in any way that they have potentiality to disturb even flow of the public life or the tranquillity of the society. The extent of the reach of the aforesaid acts remains confined to certain individuals connected with the aforesaid auction which preceded the murder. It is, therefore, clear that the grounds, which are the basis of the detention order are not relevant for the detention of the petitioner for maintenance of the public order. The detention order cannot therefore, be justified and it deserves interference as contended by the learned Counsel for the petitioner.

23. The petition is accordingly allowed and the detention order is set aside. The petitioner shall be set at liberty forthwith unless required to be kept in jail in connection with any other case.