

(2000) 05 AHC CK 0129

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 51168 of 1999

Israr @ Asrar Alam Sheru

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 24-05-2000

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2000) 05 AHC CK 0129

Hon'ble Judges : S.R.Singh, J and Ratanakar Dash, J

Final Decision : Allowed

Judgement

1. Heard Shri M.S. Haq, assisted by Shri Abrar Ahmad, learned Counsel for the petitioner, Shri J. Lai, learned Counsel for Union of India and Shri Patanjali Misra, learned Additional Government Advocate for State authorities.

2. The petitioner was arrested on 1531999 in Case Crime No. 71 of 1993 under Sections 307, 286, 504, 506, IPC and Section 4/5 Indian Explosive Act registered at Police Station Khuldabad, District Allahabad. The bail application filed by the petitioner was rejected by the Sessions Judge, Allahabad vide order dated 28499. The District Magistrate passed the impugned order of detention in exercise of power under subsection (2) read with Section 3 of the National Security Act, 1980 on 10699 with a view to preventing the petitioner from acting in any manner prejudicial to maintenance of public order. The detention order was made on the solitary incidence giving rise to case crime No. 71 of 1999, referred to above. The detention order was served on the petitioner in the Central Jail, Naini, Allahabad on 11699. It was approved by the State Government on 18699 (within 12 days from the date of passing of the order) as required under Section 3 (4) of the National Security Act, 1980. The case was referred to the Advisory Board by the State Government on 216 99. The petitioner received information about approval of his detention in the Central Jail on 21699. The of the detention by the State Government was communicated to the petitioner through the District Authorities by radiogram letter on 21699.

Same day, the detention order alongwith other connected papers were sent to the Central Government which were received by the Secretary, Ministry of Home Affairs, Government of India, New Delhi on 23699 (Le. within 7 days from the date of approval of the State Government as required under Section 3 (5) of the Act. The Advisory Board gave its opinion that there was sufficient cause for detention of the petitioner and upon receipt of the report, the State Government considered the matter again and decided to confirm the detention order for keeping the petitioner in detention for a period of 12 months. Information to this regard was given to the petitioner vide radiogram letter dated 16699.

3. The detention is sought to be quashed on two grounds : firstly, that the order of detention was passed while the petitioner was in jail and there was no material on record of detaining authority to show that there was any likelihood of the petitioner being released from the jail : second ground of attack is unexplained delay on the part of the State Government in disposal of the petitioner's representation.

4. It has been submitted by the learned Counsel for the petitioner that in the absence of any material on record showing that the petitioner was likely to be released on bail, the satisfaction of the detaining authority that the petitioner on being released from jail would repeat the prejudicial activity, is vitiated by error of law.

In para 9 of the writ petition it has been stated that the bail application filed on behalf of the petitioner was rejected by the Sessions Judge, Allahabad on 28499 and thereafter neither second bail application was moved before the learned Sessions Judge, Allahabad nor any Criminal Misc. Bail Application was moved before the High Court till the date of detention order. The detaining authority in paragraph 5 of the counteraffidavit has given a vague reply that though the petitioner was in judicial custody, pairvi was being made on his behalf to get him released. The basis of this assertion has not been disclosed in the counteraffidavit. The legal position is well settled that if the detaining authority is satisfied that the detenu is likely to be released and after being released, would indulge in prejudicial activity, it can make an order of detention. In the instant case, the satisfaction on that the petitioner was likely to be released on bail is based on no material on record. In this view of the matter, the satisfaction that the petitioner, after being released would indulge in prejudicial activity is vitiated by error of law Reference may be made to the decisions in Rameshwar Shaw District Magistrate, Burdwan, AIR 1964 SC and All Jan Mian v. District Magistrate, Dhanbad, AIR 1983 SCI 130.

5. The detention of the petitioner is also vitiated on the ground of unexplained delay in deciding the representation dated 23699 which was admittedly received by the State Government on 26699 but it came to be rejected on 18799. The delay has not been satisfactorily explained, as would be evident from para 3 of the counteraffidavit filed by R.S. Agarwal, Joint Secretary, Home & Confidential Department, U.P. Civil Secretariat, Lucknow.

6. In view of above discussion, we are of the firm view that the impugned order of detention as also the continued detention of the petitioner is vitiated by error of law.

7. In the result, the writ petition succeeds and is allowed. The impugned order of detention is quashed. The respondents are directed to set the petitioner at liberty forthwith, if he is not wanted in any other case.